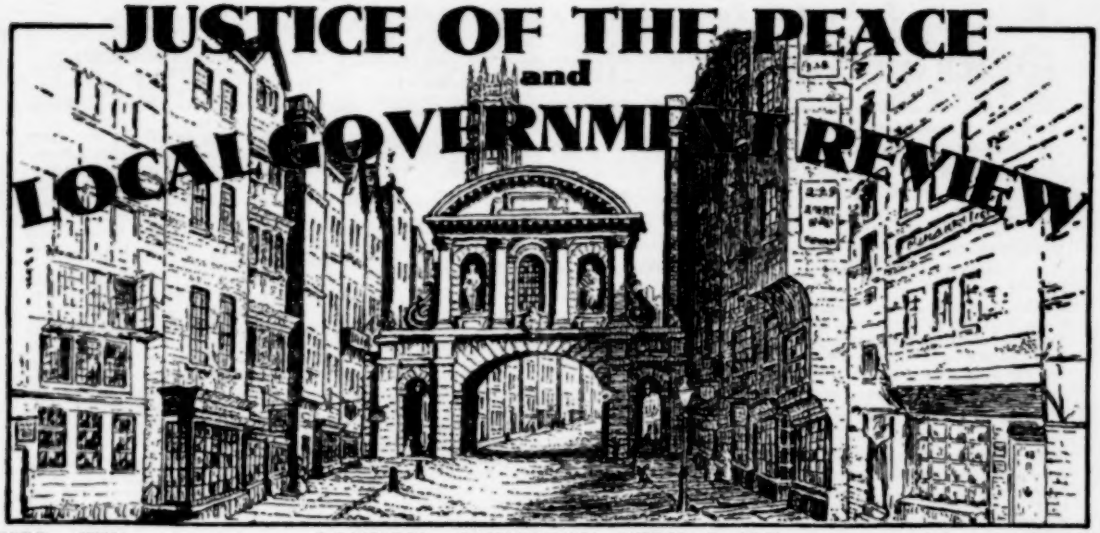

VOL. CXV. LONDON: SATURDAY, APRIL 7, 1951. No. 14

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REPORTS

Official & Classified Advertisements, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. per line and 3s. per displayed headline. Classified Advertisements 24 words 6s. (each additional line 1s. 6d.) Box Number 1s. extra *Latest time for receipt* 10 *a.m. Thursday.*

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City of Salford

Town Clerk's Department

Legal Assistant

APPLICATIONS are invited for the position of Legal Assistant (unadmitted) in the Town Clerk's department. Applicants should be thoroughly experienced in the preparation of all types of Contracts usually entered into by a local authority and must be competent to take charge of the Register of Local Land Charges.

Salary £480 per annum rising by annual increments of £15 to a maximum of £525 per annum.

The salary is subject to deduction for superannuation purposes and the successful applicant will be required to pass a medical examination.

Applications, accompanied by two recent testimonials, should be delivered to the undersigned not later than April 21, 1951.

Applicants must disclose whether they are related to any member of the Council or senior officer.

Canvassing, either directly or indirectly, will disqualify.

H. H. TOMSON,
Town Clerk.

Town Hall,
Salford, 3.

Urban District of Ruislip-Northwood

Appointment of Deputy Clerk of the Council

APPLICATIONS for this appointment are invited from Solicitors with a wide experience of Local Government law and administration.

The commencing salary will be between the range £950—£1,050 rising by six annual increments of £25 to the appropriate maximum.

Full particulars of the appointment and form of application can be obtained from the undersigned (quoting D/C—J.P.) and completed applications must be sent to arrive not later than Monday, April 23, 1951.

Canvassing will disqualify.

B. BARKER,
Clerk of the Council.

Council Offices,
Northwood.
March 29, 1951.

Borough of Swindon

Appointment of Junior Assistant Solicitor

APPLICATIONS are invited for the appointment of Junior Assistant Solicitor in the Town Clerk's Department, at a salary in accordance with A.P.T. Grade V (*a*) of the National Scales (£550 to £610 per annum).

The appointment is subject to the provisions of the Local Government Superannuation Act, 1937, and to the passing of a Medical Examination and will be terminable on one month's notice on either side.

Applications, on forms obtainable from me, must be returned not later than April 21, 1951.

Canvassing will be a disqualification.

D. MURRAY JOHN,
Town Clerk.

Civic Offices,
Swindon.
March 28, 1951.

County Borough of Wigan

Junior Assistant Solicitor

APPLICATIONS are invited for the appointment of Junior Assistant Solicitor at a salary in accordance with the National Joint Council Scale as follows:—(*a*) After admission and on first appointment within A.P.T. Division, Grade V_A £550—£610 per annum), (*b*) After two years' Legal experience from date of admission within A.P.T. Division Grade VII (£635—£710 per annum).

Local Government experience is desirable but not essential.

Applications, with copies of two recent testimonials, must be received by me not later than April 17, 1951.

ALLAN ROYLE,
Town Clerk.

Municipal Buildings,
Library Street,
Wigan.

City and County Borough of Carlisle

Appointment of Chief Administrative Assistant

APPLICATIONS are invited for the above appointment in the Town Clerk's Department. Applicants should have had considerable practical experience in work of a legal and administrative nature and preference will be given to persons who have served in the department of a Town Clerk or in the Office of a Solicitor in private practice. The salary will be in accordance with A.P.T., Grade VI.

The appointment will be subject to the National Scheme of Conditions of Service, to the Local Government Superannuation Act, 1937, and to a satisfactory medical examination.

Applications, endorsed "Chief Administrative Assistant," stating age, present position, giving full particulars of experience and accompanied by copies of three recent testimonials, should reach me not later than April 11, 1951.

H. D. A. ROBERTSON,
Town Clerk.

15, Fisher Street,
Carlisle.

West Riding of Yorkshire Combined Area Probation Committee

Appointment of Two Male Probation Officers

APPLICATIONS are invited for the above whole-time appointments.

One officer will be centred at Doncaster and assigned to the Doncaster County Borough and the Petty Sessional Divisions of Strafforth and Tickhill Lower and Osgoldcross Lower, and one officer will be centred at Barnsley and assigned to the Barnsley County Borough and the Petty Sessional Division of Staincross.

Applicants must be not less than twenty-three nor more than forty years of age except in the case of whole-time serving officers and persons who have satisfactorily completed a course of training approved by the Secretary of State.

The appointments will be subject to the Probation Rules, 1949, as amended by the Probation Rules, 1950, and to the Local Government Superannuation Act, 1937, as amended by the West Riding County Council (General Powers) Act, 1948.

The successful candidates will be required to pass a medical examination.

Application forms may be obtained from the Principal Probation Officer, West Riding Court House, Wakefield.

Applications, together with two recent testimonials, should be enclosed in a sealed envelope marked "Appointment of Probation Officer," and must reach the undersigned not later than April 28, 1951.

BERNARD KENYON,
Clerk to the Combined Area Probation Committee.

Office of the Clerk of the Peace,
County Hall,
Wakefield.

Justice of the Peace
and
Local Government Review
[ESTABLISHED 1837.]

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NOTES of the WEEK

Common Informers

The term "common informer" has acquired an unpleasant connotation, and there is no lack of public support for the Common Informers Bill now before Parliament.

A common informer is a person who sues on a penal statute which entitles anyone to sue to recover the penalty imposed. In bygone days there have been people who made a regular income by finding out breaches of certain statutes and recovering penalties. In more recent times there was a crop of cases in respect of certain Sunday entertainments. Today the general feeling is that offences should be prosecuted by the ordinary machinery of the criminal law and by persons without pecuniary inducement. This is what the Bill, if it becomes law, will accomplish.

The Schedule of Acts providing for common informer actions contains a number of forgotten statutes and some almost forgotten offences. The earliest statute is 5 Edw. 3, c. 5, which refers to the Sale of Wares after Close of Fair, while the latest is the Representation of the People Act, 1949. The mention of the Maintenance and Embracery Act, 1540, recalls two offences of which few people other than lawyers have ever heard. Maintenance is defined as "an officious intermeddling in a suit that in no way belongs to one, by maintaining or assisting either party, with money or otherwise, to prosecute or defend it, but as not being applicable to criminal proceedings." Champerty is closely related to it. Embracery consists of an attempt to influence a jury corruptly. All three are indictable misdemeanours.

Court of Criminal Appeal

In *R.* v. *Hertfordshire, JJ.* (1845) 9 J.P. 198, it was laid down that a justice whose conviction or order is appealed against cannot take part in the appeal at quarter sessions. As an appeal to quarter sessions is a re-hearing, and by no means confined to legal argument, it is natural and proper that the members of the appeal tribunal should approach the case with a fresh mind not influenced by what has happened at petty sessions. We believe it to be the practice of some courts of quarter sessions to go even further and to arrange that no justice from the petty sessions division concerned shall take part in the hearing of the appeal.

The position is obviously different when the matter is simply one of legal argument. In the Court of Criminal Appeal on March 20, the Lord Chief Justice was sitting with two judges, one of whom had presided at the trial of an applicant for leave to appeal. Lord Goddard said it had been the custom to adjourn in such cases, and the question was whether it was always necessary. Occasionally it was undesirable that the trial judge should sit on an appeal. It all depended on the nature of the appeal.

Where the appeal was simply based on arguments to the effect that the verdict of the jury was wrong, that had nothing to do with the judge and it was quite immaterial whether or not the judge who tried the case happened to be a member of the Court of Criminal Appeal before whom the case came, because that court did not interfere with the verdict of juries, provided that there was evidence to support their verdict, and no misdirection by the judge was alleged.

There might be occasions in the case of final appeals when it would be undesirable, and might even be embarrassing, if the trial judge should sit. In former days when appeals were heard before the three Common Law Courts sitting *in banc*, it was a common thing for the judge before whom the trial had taken place, and whose ruling might be impugned, to sit.

Where the ground of appeal was nothing but an argument that the verdict was a wrong verdict there was no reason whatever for saying that the trial judge should not sit on the appeal and, in fact, in some cases it might be very useful that he should do so.

The older law reports contain examples showing that in the Court for Crown Cases Reserved the trial judge often sat as a member of the court, explained upon what basis he had decided the point of law involved, and was doubtless of considerable help in the deliberations of the court.

Unappreciated Legal Aid

It has often been said that insufficient use has been made of the power to grant free legal aid under the Poor Prisoners Defence Act, 1930, although justices have, we believe, been making more use of it in the last few years.

The idea of giving legal aid in criminal cases to those who need it but cannot afford to pay for it appeals to most people as a reasonable method of helping to bridge the gap between rich and poor.

Apparently, however, legal aid is often little appreciated. In the Court of Criminal Appeal on March 19, the Lord Chief Justice made some strong comments, and said that one of the commonest things put forward in cases which come before the Court is an attack on defending counsel. "According to the accused," Lord Goddard went on, "their counsel has never done anything right. Complaint is made that counsel wrongly advised a plea of guilty or that he did not tell the judge something which he should have told him, or that he did not call some witness."

There is, of course, the type of defendant who thinks he can do better than his advocate, even when he has engaged that advocate at his own expense. Before the justices, he interrupts his advocate and begins cross-examining for himself, only to be told that either he must leave it to his advocate, or relieve him of the case, as he cannot have it both ways. What he fails to realize is that counsel or solicitor knows better than he does how to protect his interests. The defendant in person is not unlikely to ask questions the results of which may be to let in something entirely adverse to himself. As the Lord Chief Justice said, " very often counsel do not put forward everything which they are asked to put forward."

It is not surprising that the Lord Chief Justice should have said, " I am beginning to believe that it would be far better to leave many of these people to defend themselves."

Approved Probation Homes and Hostels

In circular No. 57/1951 dated March 20, and addressed to secretaries of probation committees and clerks to justices, the Home Office announces revised flat rates to be charged in the financial year beginning April 1, 1951, in respect of persons under the supervision of a probation officer and required by a probation or a supervision order to reside in an approved probation hostel or an approved probation home. These rates have been raised owing to increased costs all round, to £1 9*s*. 9*d*. for hostels and £2 7*s*. 3*d*. for homes.

The circular concludes with an appropriate injunction as to the need for managing committees to keep the expenditure to the minimum consistent with the maintenance of proper standards. On its part, the Home Office will continue to make every effort to secure economical administration of the establishments.

West Ham Juvenile Court

Included in a most comprehensive and informative report on the work of the West Ham magistrates' court for the year 1950 are some interesting items from the juvenile court.

During the year there was a marked decline in the number of juvenile offenders brought before the court, the total being 220 as compared with 299 in 1949. There was, however, a considerable increase in the number of juveniles brought before the court as in need of care or protection or beyond control. As to care or protection cases, a police officer of high rank, who attended a meeting called by the mayor to consider juvenile delinquency in the borough, which meeting resulted in there being formed the West Ham Group for Juvenile Delinquency, stated that in the last six months the women police had for the first time been brought up to establishment. He added it was part of the duty of women police officers to inquire into the welfare of children and young girls in particular, and with regard to the increase of the work in the juvenile court so far as care or protection cases were concerned, this might well be the result of the work of the women police officers.

The question whether pre-trial inquiries are desirable, even for the juvenile court, is still a matter upon which opinions differ. This is what the West Ham report states :

" Home circumstances and school reports continue to be prepared and submitted on all offenders. For some months the court has been experimenting with post-trial reports in place of pre-trial reports, and this would appear to be more advantageous because the probation officer gets a much more receptive response from the parents and a broader basis of understanding is established, at the outset. In addition, remands for inquiries have meant a more even spread over of the work of the Juvenile Court."

One of the main troubles connected with work among children, especially those who have to be dealt with by the juvenile court, is that of finding foster parents or suitable lodgings. The matter has been tackled in West Ham with good results :

" An appeal for foster parents and lodgings made by the stipendiary magistrate and Mr. R. C. Boardman, chairman of the juvenile court, and probation committee, at a meeting held by the mayor in conjunction with the West Ham hostel for youths, resulted in 117 persons living in various parts of the British Isles offering themselves as foster parents and twenty-seven householders offering lodgings."

The Census

On Sunday next, April 8, will take place the fifteenth census of this country. Save for 1941, when the war prevented it, there has been a census every ten years beginning with 1801. The enumeration for the purposes of the National Register in September, 1939, cannot be compared with a proper census ; it need hardly be emphasized that ordinary censuses have nothing to do with the National Register, or with any process designed to identify individuals. Local authorities are not directly concerned with the taking of a census, though they have been asked to help in any way open to them. Ever since the General Register Office was set up in 1837 the registrars of births and deaths have been the responsible local agents of the Registrar General to the Census. They are being used again on the present occasion, and their task in recruiting and controlling the operations of 50,000 enumerators and in performing the many local processes involved has been no sinecure. This time the questions to be asked are more numerous than in 1931 but all the questions, except three, have, in substance, been asked on some previous occasion. The three exceptions are (*a*) the question, addressed to married women under fifty who have been married more than once, asking the date of their first marriage, in addition to the date of their present marriage, (*b*) the additional question on education, asking people who have finished their full-time education to state the age at which it was finished, and (*c*) the set of questions on household arrangements, asking the heads of households to state whether the household has the exclusive use of, or only shares, a piped water supply within the house, a cooking stove or range, a kitchen sink, a water closet, and a fixed bath. The question about date of first marriage is thought necessary because of the number of divorced and widowed women who have re-married, and it will enable the total number of children born to such women to be related to the whole period " at risk." The question on household arrangements will provide housing authorities throughout the country with useful local and comparative data.

The first purpose of a census is to count heads and for that no other method can take its place. We all have reason to be thankful for the valuable population estimates issued annually by the Registrar General, but all estimates need to be periodically checked with the facts. Apart from providing mere numbers both nationally and locally, the census provides a vast array of data about the condition of the people, their ages, their nationalities, their education, their occupations, their industries, their places of work, without which the State and the local authorities would be gravely handicapped in their everyday work. The first results will, as before, be produced in a preliminary report giving the populations by local government areas by sexes, and this report should be available within two or three months of census day. Thereafter county volumes will become available, followed by general tables and by volumes on special subjects such as housing, occupations, and industries, rounded off by the general report in three or four years time. On this occasion, however, the hope is held out that a number of important

results may be available within a year of census day, based upon a one *per cent.* sample of the whole : this is an important innovation which will be watched with interest. Considering the great scope of the census results, the schedule of questions is a model of brevity and simplicity and a generation trained on form filling and football pools should have no difficulty in completing it. It is high time we had a census. We can all fill up our form on April 8 (or if we are rigid Sabbatarians, on the morning of the next day) with the confident feeling that our efforts, combined with those of our fellow citizens, will bring benefit in time to all of us and harm to none.

Application to Hospitals

As in earlier censuses, the responsibility for rendering a return in respect of persons present on census night in any hospital is placed, under the Census Order, 1950, upon the chief resident officer or other person for the time being in charge of the hospital. The Registrar General, who is the central census authority, recognizes that this obligation will impose a fairly heavy administrative burden on the staffs of large establishments, and has provided the following information which may assist them in making the necessary arrangements for the enumeration of all persons (staff, patients, and others) who spend that night in hospitals. In all hospitals with over one hundred residents (staff, patients, etc.) the local census officer—normally the Registrar of Births and Deaths—will have delivered a supply of the appropriate schedules during the week in which we publish this issue. For smaller hospitals, this will be done by the ordinary enumerator. The obtaining of the required information from each person on the hospital premises that night, and the completion of the necessary schedules, are matters to be arranged by the chief resident officer and his obligation is discharged when the complete return is handed to the census officer or enumerator who will call for it next Monday or Tuesday. It is contemplated that in hospitals with more than one hundred residents the enumeration of persons certain or most likely to be present on census night will have been going on throughout the week, care naturally being taken to check that the persons concerned are in fact still alive and present on the premises on the night of April 8. By this means the bulk of the work should have been spread over a period of some days. It is possible that some persons may, for personal reasons, be unwilling to give the required particulars to the chief resident officer, or the person deputed by him to obtain them. In such cases a separate confidential return may be made by the person concerned, and forms for these returns will be obtainable by arrangement with the enumerator or the local census officer. A person making such a return will hand it back to the census officer or enumerator direct (or under cover *via* the chief resident officer) and no particulars (*except the name and relationship in columns A and B, which must appear*) should be entered in the main hospital schedules in respect of that person. A green slip to identify such individual returns will also be provided by the census officer or enumerator. It is hoped, however, that the call for such separate returns will be kept to the minimum. In general, the efficient working of the census machinery will depend upon full co-operation between the census authorities and the persons responsible at law for making returns, in this case between local census officers and chief resident officers of the hospitals in their sub-district. In view of the importance of the statistics which the census is designed to produce and which are of direct value to hospitals, the Minister of Health has expressed the hope that boards and committees will facilitate the taking of the census in their hospitals, by encouraging those responsible to co-operate fully and cordially with the local census officers and concert all necessary arrangements in advance.

Keeping Councillors Informed

Increased delegation of the business of local authorities to committees with full power to act is a necessary consequence of the increase in their work. Dislike is sometimes voiced by young and energetic councillors, who feel that they are kept out of work in which they would like to take a share, if as councillors they are not given a chance to debate the proposals of committees before the proposals have been put into force, and also by older and more old-fashioned councillors who have nostalgic memories of the days before the passing of the Local Government Act, 1933, when committees set up by the councils of boroughs could not (apart from a few towns where there were local Acts of Parliament) be given power to act, and could only recommend. Some local authorities have sought to meet the grievance by providing in their standing orders that a councillor who is not a member of a committee may attend that committee's sittings, even when members of the public are excluded (as they usually may be), and other local authorities have adopted such devices as requiring a committee to report specially to the council, upon any communication made to the committee by a councillor who is not a member of the committee. We are not sure that either of these devices is a good one. We should on the whole prefer to rely upon the right of a councillor, when a committee's report is brought before the council, to ask questions and, in an extreme case, to move that the council disapprove of the committee's action. It is true that, where that action has already been taken in virtue of delegated powers, a motion of disapproval if successful will not of itself undo what has been done, but the possibility of such a motion would be a deterrent to the taking, in virtue of delegated powers, of a course which the committee has reason to think the council as a body would disapprove, and at the same time the committee would remain free to act according to its own judgment, within the scope of the delegated powers, and could consider whether the potential objecting councillor carried enough guns to make him a dangerous critic, or was ploughing a lone furrow in which the council as a body would not wish to walk. The taking by committees, under delegated powers, of a definite line of their own is in no way inconsistent with their giving full information to all members of the council. We have said more than once that we think it is a mistake to circulate committee minutes to the council, or print committee minutes in the council's agenda, but there ought to be a full report of everything the committee does. We think also that a councillor ought upon request to be supplied with copies of public documents coming to the council as a body, even though action on those documents falls within the province of a committee excising delegated powers. We make this point because of a protest we have received from a councillor interested in housing who, not being a member of the housing committee of his local authority, had been refused copies of housing circulars reaching the council from the Ministry of Health. Apparently it was the council's practice to pass all such circulars at once to the housing committee, and that committee had directed the clerk not to supply copies to the councillor in question. True, most such circulars are printed and on sale but, without co-operation from the council's officials, the councillor who is not a member of the committee will not know when they have been issued—or can only learn by putting himself to some trouble, as by obtaining copies from the Ministry of the periodical lists of documents issued. Even if it meant obtaining at the cost of the ratepayers some extra copies of every such published document, we think this would be justifiable expenditure for the sake of ensuring that councillors who take an interest in a particular piece of business, even though not charged by the council with executive functions in relation to that business, shall be able to keep themselves abreast of what is being done.

ENFORCEMENT OF GUARDIANSHIP ORDERS MADE PRIOR TO R. *v.* SANDBACH JUSTICES

By G. TAYLOR, *Clerk to the Justices, Solihull*

A great deal had been written about the difficulties confronting courts of summary jurisdiction since the decision in *R.* v. *Sandbach Justices, Ex parte Smith* (1950) 114 J.P. 514. Those difficulties are very real and, whilst it is not intended in any way to minimise them, they are not insuperable. It is submitted, however, that a far more important consideration is what shall happen in the future in respect of orders made in the past under circumstances not unlike those in the before mentioned case.

It is common knowledge that prior to the Married Women (Maintenance) Act, 1949, complainants in matrimonial cases before justices, frequently issued a second summons under the Guardianship of Infants Act, 1925, in respect of the children of the marriage. The purpose was threefold (1) an order for custody in respect of the children could be made if the principal cause of complaint was unsuccessful, (2) custody could be given during infancy, *i.e.*, until twenty-one years and (3) there could be awarded a maximum weekly payment for maintenance in respect of an infant of £1, whereas for a child under the Married Women Acts, the maximum weekly sum was 10s. The court assumed jurisdiction to deal with both applications if the cause of complaint under the Married Women Acts arose wholly or in part within the jurisdiction of that court, and that, wherever the defendant resided, if such residence was in England or Wales. It follows, therefore, that there must be countless guardianship orders made against defendants who were not residing in the district of the court which made the order. Are such orders enforceable in the future, and if it is sought to enforce them, what action should the court take if a defendant sets up the plea of want of jurisdiction at the time the order was made? The question appears to be of some complexity, and it is proposed to examine such legal authority as can be found, to ascertain if a satisfactory conclusion can be reached.

In *Berkley* v. *Thompson* (1884) 49 J.P. 276, Lord Selbourne, L.C. said, " . . . the general principle of Law is *actor sequitor forum rei*; not only must there be a cause of action of which the tribunal can take cognizance, but there must be a defendant subject to the jurisdiction of that tribunal." Summary courts derive their jurisdiction from statute, and it is impossible to confer jurisdiction, either by agreement of the parties, or by submission of a defendant thereto, if the court lacks jurisdiction in the first instance. In *Foster* v. *Underwood* (1877) 3 Ex. D. 1, Bramwell, L.J., said, in dealing with the question of jurisdiction, " It is urged that consent has waived the objection. I do not understand what is meant by waiving the objection . . . The parties cannot by consent confer a jurisdiction which does not exist." Examining then the decision in *R.* v. *Sandbach Justices, Ex parte Smith*, we find that Lord Goddard, C.J., in reading the reserved judgment of the court, said, " In our opinion, the intention of the Act is that proceedings, other than any taken in the High Court, must be brought where the respondent lives and not where the applicant lives, and for these reasons the Cheshire justices had no jurisdiction to make the order." It follows, therefore, that Guardianship orders made by courts of summary jurisdiction against defendants residing outside the local jurisdiction of those courts, have been made without jurisdiction.

The question of enforcement presents difficulty, but some guidance can be derived from the case of *M'Queen* v. *M'Queen* (1920) 85 J.P. 335, where it was sought to enforce an order made by an English court of summary jurisdiction, under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1925, against a Scotsman domiciled and resident in Scotland. In deciding the case in the husband's favour, Lord Ashmore said, " There being no initial jurisdiction over the complainer, the English court had no power to cite him to that court, and on that assumption, the subsequent procedure, including both the granting of the order to pay aliment and the warrant to apprehend —all this is inept." Whilst the decision is one of a court in Scotland, it was followed in the Court of Appeal in *Forsyth* v. *Forsyth* (1948) 112 J.P. 61 where, in giving judgment on similar facts, Bucknill, L.J., said: " In my opinion, the decision in *M'Queen* v. *M'Queen* was rightly decided, and a decision to the same effect should be given in this case."

It is not suggested that the above cases are conclusive, as it appears that there is some distinction to be drawn between cases where the court would not have jurisdiction even if the defendant was in this country and could be served and cases where the court would obviously have jurisdiction provided the defendant could be served, (*see* judgment of Somervell, L.J., in *Macrae* v. *Macrae* (1949) 113 J.P. at p. 345). Guardianship cases at present under consideration, appear to fall within the former category and the court should not exercise jurisdiction even though process is properly served and the defendant appears and raises no objection to that jurisdiction.

If the order was bad on the face of it, there appears no doubt but that the same would be unenforceable, if, for example, a sum in excess of the maximum had been ordered. In the present cases, however, the orders would not appear bad on the face of them, as the fact that the address of the defendant, as stated in the order, is outside the local jurisdiction of the court making it, is not conclusive. As was stated in the before mentioned case of *Macrae* v. *Macrae* (*per* Somervell, L.J., at p. 345) " Ordinary residence is a thing which can be changed in a day . . . A man is ordinarily resident in one place up to a particular day. He then cuts the connexion he has with that place . . . and makes arrangements to have his home somewhere else. Where there are indications that the place to which he moves is the place which he intends to make his home for, at any rate, an indefinite period, as from that date he is ordinarily resident at that place and a person may be present in a place under circumstances which fall short of ordinary residence."

Furthermore, it is by no means certain that the court is entitled to disregard the order it has made. This conclusion it is submitted, is properly drawn from *Re Skinner* (*an infant*) *Skinner* v. *Carter* (1948) 112 J.P. 116, which arose by way of an appeal from an order of justices granting custody and maintenance to an adopting spouse on the basis that there was a valid adoption order in existence, which had been previously granted and where the marriage of the adopting spouses was alleged to be bigamous. Lord Greene, M.R., said (112 J.P. at p. 333) " It might well be thought by the legislature that, in dealing with questions of status, an order should remain a valid order when it has been made after proper investigation, notwithstanding that later on it is found that there was no jurisdiction to make it." In cases under the Guardianship of Infant Acts, however, proper inquiries would reveal a lack of jurisdiction, and further, it does not appear that an order under those Acts is an order affecting status.

It is an undoubted fact that the order can be challenged by appropriate process and whether this is by *certiorari* or by appeal out of time with leave, is a question upon which the writer expresses no opinion. It may even be possible for application to be made to the court which originally made the order for variation thereof. Section 3 (4) of the Guardianship of Infants Act, 1925, provides: "Any order so made may, on the application either of the father or the mother of the infant be varied or discharged by a subsequent order." Though fresh evidence is not a specific requirement of the section, it was held in *R.* v. *Middlesex Justices* (1933) 97 J.P. 130, that fresh evidence is in fact necessary to support such application, but "if injustice is to be avoided, the stringency of the test to be applied in determining whether further evidence adduced in support of an application under the Guardianship of Infants Act, 1925, s. 3 (4) must vary a great deal according to the circumstances of each particular case . . . the absence from s. 3 (4) of the Act of any express reference to 'fresh evidence' suggests that the court was intended to have greater latitude in dealing with applications under that subsection than it has under analogous statutory provisions which expressly require the production of fresh evidence as a condition of the variation or discharge of any order made," *per* Jenkin, J., in *Re Wakeman, Wakeman* v. *Wakeman* (1947) 111 J.P. at p. 377. Furthermore, in the matter of custody, the paramount consideration is the welfare of the child and in that connexion, the adequacy of the provision for maintenance is of great importance *Flood* v. *Flood* (1948) 112 J.P. 416. How much more important is it, therefore, that the provision for maintenance should be enforceable against the person required to make the payments under the order.

In conclusion, it is suggested:

(1) Either party could make application for discharge of the order under the provisions of s. 3 (4) of the Guardianship of Infants Act, 1925.

(2) The order will be enforceable until objection is taken to the initial jurisdiction, which presumably would be done on arrears process.

(3) If the question of jurisdiction is resolved in favour of the defendant, it would not appear proper to enforce the order further, but rather should the complainant be left to exercise her right which it is suggested she has under head 1 above, thereafter making application to the court having jurisdiction to make the order under *R.* v. *Sandbach Justices, supra.*

In this connexion, however, it should be borne in mind that if the marriage of the parties has been dissolved by a decree of divorce granted since the making of the guardianship order, it not infrequently happens, that custody is also granted by that decree. Thereupon, a complainant should not make a further application in a summary court, but should apply for maintenance to the High Court.

LEGISLATION AND LIBERTY

The power of a court of summary jurisdiction under 34 Edw. 3, c. 1, to bind a person over when he has committed no offence, upon which we made some observations at 114 J.P.N. 613, appeared in the newspapers again in a recent case of the type which the scientific word-builder calls scoptophilia or voyeurism according as he prefers to play with Greek or French, and the popular press is sure to head with the name of "Peeping Tom." The facts were commonplace. A forty year old engineer was seen by a policeman to be looking through park railings at a "courting couple." The constable's evidence was to the effect that the man was crouching on his hands and knees among bushes, peeping at the couple through the railings. Upon these facts he might no doubt have been charged with the thirteenth offence in s. 54 of the Metropolitan Police Act, 1839, since his behaviour might well have led to a breach of the peace and have been deemed "insulting," not only by the couple but by ordinary persons, whose appraisal of such conduct could properly be taken by the magistrate as a guide to the meaning of the adjective. At the page above mentioned and elsewhere, we have spoken from time to time of this enactment of 1839 of which, to say the least, we are not enamoured. Counsel for the police, however, in the present case, after stating that the conduct might have led to a breach of the peace, went on to say that there was "no question of punishment," and asked the magistrate to bind the man over under the Act of 1361, to put him, that is to say, not upon recognizances of the peace, but upon recognizances for good behaviour. It was stated by a learned contributor at 114 J.P.N. 496 that this is a course not infrequently taken in cases of this class, and the most surprising thing about the case at the West London court is that the learned magistrate (who refused to bind the man over), did not seem to be aware of the wide powers given by the Act. "Surely (he said) a magistrate has no power to bind people over for doing things unless they ought not to be doing them." Upon being reminded by counsel of the provisions of the Act and of the decision in *R.* v. *London Quarter Sessions* [1948] 1 All E.R. 72; 112 J.P. 118, establishing that a person put upon recognizances under this Act has no appeal, the magistrate continued "this and other things seem to me to be a grave restriction upon the liberty of the action of the citizen." We respectfully agree. The "actions of a citizen" who amuses himself by spying on the sexual activities of other people have, it is true, no claim to go unrestricted; he is a nasty creature, even nastier than the man whom journalists like to accuse (erroneously) of the offence of "eavesdropping," by which they mean looking in at windows where women can be seen undressing or the like. Such a man deserves punishment in some cases; in others he is a pathological specimen, calling for medical rather than legal treatment—especially where, as in the present case, he is a man of middle age. (In the young such conduct can be regarded as natural and not in itself unhealthy curiosity; it can be excused on the same principle as the puppy's investigation of the dunghill, and we suspect, in spite of what is said by some psychologists, can when the time arrives to put a stop to it be successfully cured in the boy as in the puppy—with a slipper.) It is not from sympathy with such persons, but from regard to the general principle of the liberty of the subject, that we return to the topic of recognizances under the Act of 1361. In cases of quite other types police prosecutors have, when it was found that no criminal charge could be established, fallen back upon the Act of 1361 in recent months; it seems high time that there should be reconsideration of the power, both under statute and at common law, to bind over where no offence is charged. The lawyer can see the difference between such binding over and putting on probation, but the cases of which we spoke at p. 613 last year show that the journalist cannot and, in the minds of the acquaintances of the persons concerned and of the general public, the stigma will be much the same as that of a conviction.

An incidental point upon the case at the West London court is that the man was said to have been " arrested to be brought before a justice of the peace to be dealt with according to law." The magistrate is not shown to have remarked upon this statement. Since open-air " courting " in the journalistic sense is, in thickly populated areas, not much of a day-time enterprise, it is reasonable to suppose that the episode occurred after sunset. If so, the constable had a power of arrest without warrant under s. 64 of the Metropolitan Police Act, 1839, the same Act as contains s. 66 on which we made some comments at 114 J.P.N. 660. Section 63 of the same Act may be mentioned for completeness ; it enacts that : " It shall be lawful for any constable belonging to the metropolitan police district, and for all persons whom he shall call to his assistance, to take into custody without a warrant any person who within view of any such constable shall offend in any manner against this Act, and whose name and residence shall be unknown to such constable and cannot be ascertained by such constable." This is much like one of the Liverpool sections discussed in *Christie* v. *Leachinsky* [1947] 1 All E.R. 567 ; 111 J.P. 224. Since the Peeping Tom in the case we are considering was not eventually charged under s. 54 or any other section of the Act, s. 63 could hardly have been prayed in aid of the arrest. Section 64, however, may have been what was meant when the words were used " arrested . . . to be dealt with according to law." This is an extensive and peculiar section. It begins by enacting that a constable may " take into custody without a warrant all loose, idle, and disorderly persons whom he shall find disturbing the public peace, or whom he shall have good cause to suspect of having committed or being about to commit any felony, misdemeanour, or breach of the peace." We pause here to remark that the decision not to charge Tom even with " insulting behaviour . . . whereby a breach of the peace may be occasioned " seems to knock out this first part of s. 64, equally with s. 63. To continue with s. 64 : after the part already quoted it goes on to empower the constable to arrest without warrant " all persons whom he shall find between sunset and the hour of eight in the morning lying or loitering in any highway, yard, or other place, and not giving a satisfactory account of themselves." Section 69 provides for taking the arrested person to a station house, to be secured until he can be brought before a magistrate to be dealt with according to law. What this means is dubious, where a person is arrested by reason of " not giving a satisfactory account of himself " to the arresting constable, but with this remoter aspect of these sections we are for the moment dealing. We accept it that the bushes where Peeping Tom was lying were " another place " within the meaning of s. 64 and that the sun had set. Unless this section was the one relied on, we do not know under what authority the arrest was made. The law as summarized by Greer, L.J., in *Ledwith and Another* v. *Roberts and Another* [1936] 3 All E.R. 570 ; 101 J.P. 23 is quoted at p. 662 of our last year's article just cited. There is nothing there to justify the summary arrest of " Peeping Toms."

One way and another, we are uneasy about some of the powers given to metropolitan policemen, in ss. 54, 63, 64, and 66 of the Act of 1839, powers not available to the police elsewhere, apart from other local Acts.

The foregoing portion of this article had been already written when a learned correspondent drew our attention to clauses which had appeared in two Bills, now before Parliament, but had been withdrawn by the promoters, the county councils of Lancashire and Nottinghamshire. These clauses followed a section which has been allowed a dozen times or so in local legislation, the last occasion being in the Rochdale Corporation Act, 1948. From other Bills before this session the clause has been withdrawn. The marginal note of this precedent in s. 115 of the Rochdale Act is : " Power to arrest persons having in their possession or conveying stolen goods." This note seriously understates the effect of the section. Subsection (1) contains two logically separate and distinct provisions. The first limb says that : " Any police constable may stop search and take into custody any person who has in his possession or is conveying in any manner anything which may be reasonably suspected of being stolen or unlawfully obtained." The verbs are the same in effect as those used in s. 66 of the Metropolitan Police Act, 1839 ; the person is much the same—a person who has or is conveying a suspected thing, instead of a person suspected of having or conveying. This seems a distinction without a difference. The order of the verbs is also (as we have said elsewhere) worthy of note. It appears that a constable may (for example) stop and search a person, man or woman, in the street. The second limb of subs. (1) enacts that " such person " (which presumably means a person who " has in his possession or is conveying . . . anything which may be reasonably suspected of being stolen or unlawfully obtained ") shall " unless he gives an account to the satisfaction of a court of summary jurisdiction of how he came by the same be liable to a penalty of not more than £5 or (except in the case of a first conviction) in the discretion of the court to imprisonment for any period not exceeding two months." We assume that a person is " convicted " under this subsection if the court is not satisfied with his " account " ; that " penalty " means " fine " ; that " conviction " does not include conviction under other enactments or at common law, and that even the person twice convicted under this section can be fined if the court thinks fit. Leaving aside these procedural difficulties on the second limb of the subsection, which seems to have been copied without much consideration from s. 26 of the Metropolitan Police Courts Act, 1839 (yoke-fellow to the Metropolitan Police Act, 1839, already quoted), the local Act section is remarkably ill drafted, even for local legislation, inasmuch as the phrase " may be reasonably suspected " (also copied from the old metropolitan Acts) does not indicate whether a reasonable suspicion must be entertained by the constable (or indeed whether it need be actually entertained by anybody at all), nor do the words " unlawfully obtained " convey any particular meaning. The prize gained in a raffle or at a church bazaar has been " unlawfully obtained " ; Parliament can hardly have intended that the prizewinner (or even a successful poker player with his winnings in his pocket) should be arrested, or that a woman should be stopped and searched in the street by a constable, or even taken into custody if she is (or even " may be ") reasonably suspected of having, in the period of the eightpenny ration, succeeded in unlawfully obtaining eighteen pennyworth of meat on two people's books. Subsection (2) forbids exercise of the powers of the section " with respect to licensed pawnbrokers or their servants apprentices or agents in a licensed pawnbroker's shop." This again is badly drafted. Presumably the pawnbroker's apprentice is not immune from being stopped and searched at all times and in all places. He is not, that is to say, given *carte blanche* to be in possession out of business hours and away from the shop of the proceeds of a highway robbery. In other words, the phrase " in a licensed pawnbroker's shop " must be adverbial, qualifying the verb " shall not be exercised," and not adjectival, qualifying the noun " agents." From this it follows that the powers of subs. (1) are exercisable not merely in streets and such like places but in shops or other places indoors : in short, anywhere within the borough—in this going far beyond the powers of s. 66 of the Metropolitan Police Act, 1839, which as was laid down by Blackburn, J., in *Hadley* v. *Perks* (1866) 30 J.P. 485 can be exercised only in the street, or at any rate (*Willey* v. *Peace* [1950] 2 All E.R. 724 ; 114 J.P. 502) in course of a journey : certainly not in a " house, warehouse, or other premises "—*per* Lord Goddard, C.J., at pp. 726 and 504 of the respective reports.

We have analysed this local Act section with this degree of care, partly in deference to our learned correspondent, an officer of a county council (not one of those which has sought the power) who seems from his communication to us to be in two minds, whether or not to favour extending the clause to other areas; partly because analysis must show (we think) that the clause cannot ever have been considered adequately by Parliamentary committees, from 1839 to the present day. From the Nottinghamshire Bill it was withdrawn, we understand, after opposition from non-county boroughs (not now police authorities, and so perhaps the more ready to think of the liberty of the subject when police powers are sought to be extended) and also from certain clerks to justices. If our information is correct on this point, such opposition to powers sought in local legislation is a new phenomenon, and potentially most valuable. Experience shows, unfortunately, that committees in the First House to which a local legislation Bill is sent cannot be relied on to preserve the liberty of the private person, when proposals for creating new offences or endowing local authorities with new and drastic powers are supported by evidence, however tenuous, or by an appeal to precedent. The private persons affected cannot be heard before the committee, and a proposal which has passed committee in the First House will not be rejected in the Second House unless there are opponents with a *locus standi* to be heard. Clerks to justices, even though they have no *locus* in the parliamentary sense, could (if they would) do much to see that attention was drawn betimes to proposals of this sort.

We have mentioned precedent. Obviously, a case can be put forward for saying that the London section above mentioned ought not to stop at the arbitrary and accidental boundary of the metropolitan police district. It can be said that the Liverpool sections which have given rise to so much litigation ought, if their powers are needed in the city, to be extended to Bootle, to cover a great part of the Liverpool Docks, to other dockside areas, and across to Birkenhead. It can be said that the Rochdale section analysed in this article, if right in Rochdale and Rotherham, ought to apply in Oldham and Sheffield; indeed, that Lancashire were right in asking for it and that other counties might do likewise. This is logical: freedom narrowing down, as Tennyson might have said, from precedent to precedent, the local legislation system working in a manner which may have been justifiable when the metropolitan and Liverpool Acts were enacted a hundred years ago, but cannot be justified today.

Logic works today more truly in the opposite direction. If these powers are good, let them be put into proper form by parliamentary draftsmen and embodied in a public general Act, but do not meantime extend them piecemeal.

We do not consider that new powers of arrest, either of the London and Liverpool pattern or the Rochdale pattern, should be given anywhere until there has been an inquiry by a strong committee, either a departmental committee or a joint select committee of both Houses, into the whole question of arrest without warrant on suspicion. When a conclusion is reached, there ought to be no new powers given in this matter by local legislation; powers, if justified (and as regards powers going beyond the existing general law we have an open mind) should be contained in the general law, and London, Liverpool, and the rest should be brought into line.

Criminal law and its ancillaries, such as the power of arrest, ought not to differ according to the accident of a local government boundary, or the still more accidental circumstance that a local authority, happening to promote a Bill in Parliament for quite other purposes, spatchcocks into it an exceptional power for its own police.

A VANISHED TENANT

A troublesome question for the lawyer advising a property owner arises when a tenant disappears, and it is desired to obtain possession of the property. In a properly drawn lease there will be provisions under which the lessor can proceed, even though the parties to a properly drawn lease do not normally expect such a contingency. But the overwhelming majority of properties are let upon agreements which are more or less informal; even when formality is attempted, the form more often than not is badly conceived, failing to produce the effects intended by the parties. Our experience does not suggest that lettings by local authorities under the Housing Act, 1936, are, normally, by way of agreements drawn up any more skilfully than the agreements commonly used by private landlords and the managing agents of ordinary weekly property.

A curious case, of the kind we mentioned at the outset of this article, recently arose. A local authority had some houses earmarked for "aged persons." This practice is now recognized, but is not recognized expressly in the statutes: in other words, a person not "aged" who (otherwise) lawfully gets into occupation is not an unlawful occupant merely by reason of the earmarking. He may not even know of it. If the local authority wish to bring it home to him that it is only in his character of an aged person that he may continue occupying, something must be said in the agreement.

An aged person may quite properly have a younger person living with him in the house: often he could not live there by himself. An aged person may also, though perhaps not so often, be able to travel beyond the orbit of his landlord and his friends. At any rate, in the case we are considering, the tenant, a widower, had had a widowed daughter living with him: she was not an aged person, and when he disappeared the council naturally wished, after several months, to resume possession and relet the house to another aged person on their waiting list. The daughter had, however, gone on paying rent and the council had accepted it—as a matter of law, these payments were made by her as agent for her father, since she had no *locus standi* of her own. In practice, in such a case it can happen that months elapse before the rent collector learns that the tenant, the principal, has disappeared.

Now, unless the contract so provides, the tenant of a dwelling-house is not bound to reside therein. In a formal lease for years, there will be negative covenants, not to use the house otherwise than for residence, and positive covenants to do various things—broadly, to pay the rent and other outgoings and to keep the house in decent condition. So long as these covenants are satisfied, it is nothing to the landlord whether the physical occupation is by the tenant himself, by his wife or daughter, or (apart from covenants against assigning or subletting) even by a stranger. It follows that if a lessor wishes to ensure that the house is occupied by nobody who is not an aged person, or an impoverished cheesemonger, or as the case may be, he must stipulate accordingly, and provide expressly for a right of re-entry upon breach of the stipulation. We were not told precisely what was in the agreement used in the case before us, but evidently there was no express provision under which the council could enter and turn out the daughter of the vanished aged person.

They were, that is to say, under the necessity of putting an end to the tenant's interest, and this, although the interest was but a weekly tenancy, they could only do by notice to quit. The question, therefore, which arose was how the notice to quit should be served. The council's own suggestion was that the daughter, who was on the premises and was paying the rent week by week as agent for her father, was on that account an agent empowered to receive on his behalf any notices relating to the property and (specifically) to receive a notice to quit. We felt bound, however, to advise that this argument would not hold water. There are in standard text-books on the law of landlord and tenant many cases cited, as if showing that a landlord's notice to quit may be effective, though served on a person other than the tenant, but upon examination of the actual reports, some pretty old, it will be found that several of the cases (which text-books mention as if suggesting that notice to a person other than the tenant may be effective), turn out to have been decided in other contexts, some of them even upon statutes which expressly provided for serving notice upon a person other than the primary addressee.

We quote the two which come nearest. In *Doe d. Prior* v. *Ongley* (1850) 20 L.J.C.P. 26, a tenant of substantial property had charged his interest, and sub-let parts of it. After his death an attorney had the whole management on behalf of his widow: in the tangled condition of the estate, the court held that notice to quit served by the head lessor upon the attorney was effective. In *Papillon* v. *Brunton* (1860) 29 L.J.Ex. 265, an attorney was the person who received rent for the landlord, and apparently the person with whom the tenant always did business. A notice of the termination of the tenancy served on the attorney was held good. But note that in *Doe d. Prior* v. *Ongley*, *supra*, the facts were so peculiar that the court could not avoid the conclusion that the agent who managed the sub-lettings was an agent for all purposes, and that in *Papillon* v. *Brunton* the attorney was the landlord's agent, not the tenant's, and tenancy was put an end to by the tenant, not by the landlord. That case, at all events, is no authority for thinking that a tenant's right to be in possession can be destroyed by notice to anybody except the tenant. Doubtless, a tenant could appoint an agent for receiving notices as well as for any other purpose, but agency is a contractual relationship which, if disputed, has to be proved: in *Papillon* v. *Brunton*, *supra*, it was not disputed. In *Pearse* v. *Boulter* (1860) 2 F. & F. 133 (the same year) it was disputed, and the court held that a landlord's agent for collecting rents was not an agent for receiving a tenant's notice. By parity of reasoning a person who is authorized to pay money is not, on that account, to be presumed to be authorized also to receive notices adverse to his principal's interests, or to surrender his principal's property, even to the principal's landlord. Cases where delivery to a wife or servant has been held sufficient, *e.g.*, *London School Board* v. *Peters* (1902) 18 T.L.R. 509, have either been decided on the footing that the notice is presumed to have reached the principal, a presumption which cannot exist when he has disappeared, or upon the presumption that a wife or servant is a general agent to receive letters on behalf of the head of the household, a presumption which is rebuttable: *Tanham* v. *Nicholson* (1872) L.R. 5 H.L. 561. In this case Lord Hatherley, L.C., made the reason of such cases perfectly clear. One comes back, therefore, to first principles. The council tenant, or the weekly tenant of a private landlord, has as much right to go round the world as has the millionaire tenant of a mansion, and all the landlord is entitled to during his absence is that some person shall be left with instructions to pay the rent and perform any other tenancy obligations. The tenant of either class is perfectly entitled to put his daughter or a friend into the house, unless the tenancy agreement forbids this.

So far, therefore, as the ordinary law of landlord and tenant was concerned, the tenant would, after a notice to the daughter (unless it could be shown that her father had entrusted her with a duty to receive it and hand it on to him) be exactly in the position described by a passage in 20 *Halsbury* 141 (para. 151) where it says: "If the tenant has disappeared, service becomes impossible unless the lease makes special provision for such a case, as by authorizing service of the notice on the premises or at the lessee's last known address: *Hogg* v. *Brooks* (1885) 50 J.P. 118." Note the parallel between the provision suggested here, in a case in 1885 (*i.e.*, earlier than the modern Housing Acts), and the provision made by s. 167 of the Housing Act, 1936. In the case before us, we felt that the most practical suggestion we could make was to draw up a formal notice to quit, addressed to the tenant, and have it served by a responsible member of the council's staff (not a mere rent collector) personally on the daughter, its purport being explained to her. For the merit, such as it is, of this explanation to the person who is being treated as agent for the tenant, *see Doe d. Buross* v. *Lucas* (1804) 5 Esp. 153. She might consent to leave. If she did not, the case would branch off according as the house was or was not within s. 167 of the Act of 1936. If not, and if the occupying daughter were to consult a competent solicitor, we greatly doubt the chance of getting an eviction order against her, as a person holding over after termination of the tenancy, because, unless the lessor could prove or she admitted that she had her father's authority to accept the notice, its service on her would have no effect and his tenancy would still subsist.

In the case, however, where the lessor was a local authority and the house provided under the Housing Act, 1936, the next step would be a notice to her under s. 1 of the Small Tenements Recovery Act, 1838, as being "a person by whom the same shall then be actually occupied"—the contention being that the father's tenancy has been determined: *see* the concluding words of s. 156 of the Act of 1936. The council could then try to convince the court that the notice to quit was effectually served by reason of para. (*b*) in s. 167 of the Housing Act, 1936. Or the council might if they preferred try to get under cover of s. 167 by way of para. (*c*) in that section, *viz.*, registered post addressed to the tenant at the house: *Re Follick, ex parte Trustee* (1907) 97 L.T. 645—a banktuptcy notice in that case, not a housing notice, but both have a statutory mode of service, and the language of the statutes is indistinguishable. The reason why we suggested method (*b*) as a first choice was that it would ensure that the daughter, who was holding the fort, would know what was in the notice, which would lead up to the notice under the Act of 1838. We believe local authorities have secured possession in similar cases in this way. The argument to be advanced is that management is vested in the local authority by s. 83; that determining tenancies is a step in management (this is clear since *Shelley* v. *London County Council* and *Harcourt* v. *London County Council* [1948] 2 All E.R. 898; 113 J.P. 1; that you cannot determine tenancies except by notice, and therefore that a notice to quit is a "notice, order, or document required or authorized to be served under this Act." In this context it may be worth remarking that in s. 167 the preposition is not "by" but "under." Section 167 would be stronger in the council's favour if it said "for the purposes of" this Act: the notice to quit, though served for the purposes of the Act, is "required by" and is "served under" the common law. However, the decision of the House of Lords last cited does seem to hold out a chance of success along the line of attack by way of s. 167.

A LIBRARY LAMENT

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J.P.C.

CHIEF CONSTABLES' ANNUAL REPORTS, 1950

(*Continued from p.* 183 *ante*)

6. COUNTY OF LINCOLN

The police area is 1,692,773 acres and the population 535,870. Established strength is 693 and at the end of the year there were no vacancies.

The chief constable, in an introduction to the report, says: "The value of an annual report . . . is generously acknowledged in most quarters, but there has been some criticism of the cost of producing the earlier issues. Attention has, therefore, been directed to the problem of effecting economies, without destroying the character of the report or sacrificing interesting material. It is hoped that the desired object has been achieved by stating the facts more concisely . . ."

During the year 386 applications were received and of the number seventy-five were accepted for appointment. The wastage through retirements and for other reasons was forty-seven. The average number of days lost by each member of the force due to illness was 7.76, the year before it was 8.18; in 1941 the figure was 7.99.

The active strength of the special constabulary is 1,872, of which 1,396 have uniform. There are 267 vacancies. Police pensioners, including widows and dependants, aggregate 429. During 1949, thirty-four more houses were built.

Indictable offences numbered 4,200, of which 2,304 were detected; in the previous year the figures were 4,436 and 2,326. Juveniles dealt with for criminal offences increased from 557 in 1949 to 563, whilst the offences committed by them were 577 and 608 respectively.

Licensed premises totalled 1,636 and there were 220 registered clubs. There were 201 persons proceeded against for drunkenness, against 182 in 1949. Fourteen people were drunk on account of drinking methylated spirits, the year before there were nine.

Road accidents reached 6,219 compared with 5,057 in the year before. There were ninety fatalities, sixteen more than in 1949 and forty more than in 1948. Injuries numbered 2,427; that is a higher figure than any recorded during the past eleven years and of all the accidents forty *per cent.* were attributable to the bad driving of motor vehicles.

7. STOCKPORT

The acreage is 8,598 acres and the population 140,900. Established strength is 204 and the actual number engaged at the end of the year was 201. Applications numbered 133 of which forty-one were accepted; sixty-six failed in the entrance examination.

Road accidents reported to the police were 1,247, involving nine persons killed and 481 injured. Sixteen drivers were convicted of being under the influence of drink whilst in charge of motor vehicles. School wardens are in attendance in the vicinity of schools and thirty-four are engaged on these duties "but it is difficult to maintain the staff at maximum strength as there are frequent resignations, and the low wage paid does not attract suitable applicants."

On the question of police buildings the report comments: "During the year efforts have been made to obtain sites for the erection of new police headquarters but no suitable site has been found."

Premises licensed for the sale of intoxicants total 275, seven more than in 1949. There are sixty-six registered clubs with a membership of 23,381.

Indictable offences numbered 2,128 against 1,501 in 1949. Juveniles dealt with for crimes totalled 231.

8. BARNSLEY

The acreage of the borough is 7,817 and the population 73,877. The established strength of the force 114; vacancies at the end of the year were eight. The authorization of special constables is 228, of which 122 have been recruited.

There are 183 licensed premises and thirty-four registered clubs with a membership of 19,009. One hundred and two males and five females were charged with drunkenness, an increase of forty-six on the year before.

Criminal offences reported to the police were 1,087 against 1,117 in 1949, the offences detected were 667 and 724 respectively. Two hundred and twelve juveniles were dealt with for crime, the year before the number was 239.

The total of road accidents was 623, an increase of eighty-eight on the year before. Five pople were killed, five less than in 1949, and 276 were injuries.

9. DEWSBURY

The area of the borough is 6,720 acres and the population 52,780. Authorized strength is ninety-one and at the end of the year there were eleven vacancies. The intake during the year was six probationers, and retirements numbered five.

On the subject of housing the report shows that since the end of the war twelve houses have been either bought or built, and that four more are in course of erection.

There were 511 indictable offences during the year, against 554 in 1949; 54.7 of crimes committed were detected. Property stolen amounted to £6,930 (£6,029 in 1949) and that recovered £2,204, compared with £1,705 the year before. Sixty-six children were dealt with for indictable and non-indictable offences, in the previous year there were sixty-five.

Road accidents totalled 504 and persons killed, three; injuries amounted to 117; during 1949 the figures were 446, two and 118.

There are 151 licensed premises and forty-one registered clubs with a membership of 17,578. Thirty-one cases of drunkenness occurred against twenty in 1949. Six persons were dealt with for driving whilst under the influence of drink.

10. CARDIFF

The area of the city is 14,060 acres and the population 243,500. Authorized strength is 434 and at the end of the year there were forty-six vacancies. Twenty-seven appointments were made. The establishment of policewomen is twenty and there are five vacancies.

Indictable offences totalled 3,025 against 3,100 the year before; 340 juveniles were dealt with, in the previous year there were 287 and in 1939, 207. Forty-one *per cent.* of all offences were detected compared with thirty-eight in 1949. Stolen property was valued at £40,303 and that recovered at £10,636.

Road accidents numbered 1,755; twenty-one people were killed and 829 injured. By comparison with the year before there was an increase of ninety-seven accidents, one fatality, and 119 injured.

Licensed premises number 288, sixteen more than a year ago, and there are seventy-one registered clubs with a membership of 46,570. Charges of drunkenness referred to 187 males and thirty females; the year before the figures were 120 and twenty-five

At the end of the year twenty-six houses had been completed and occupied; four are in course of erection and thirty more are planned.

Seventy-five prosecutions were taken under the heading of prostitution, and fifty-two for aiding and abetting the offence, compared with thirty-two and twenty-six respectively in 1949. Five men were charged with living in part on the earnings of prostitution.

WEEKLY NOTES OF CASES

COURT OF APPEAL

(Before Sir Raymond Evershed, M.R., Jenkins and Hodson, L.JJ.)

March 8, 9, 12, 1951

HINCKLEY URBAN DISTRICT COUNCIL *v.* WEST MIDLAND GAS BOARD

Gas—Nationalization—Financial adjustment—Power of local authority to apply surplus revenue in aid of general rate—Unappropriated profit of working period up to vesting date—Liability of area gas board to remit—Gas Act, 1948 (11 *and* 12 *Geo.* 6, *c.* 67), *s.* 56 (2)—*Interpretation Act*, 1889 (52 *and* 53 *Vict.*, *c.* 63), *s.* 38 (2) (*c*).

APPEAL from LLOYD-JACOB, J. (115 J.P. 50).

Until May 1, 1949, the plaintiffs, a local authority, supplied gas to a certain area. On that date their gas undertaking became vested in the defendant board under the Gas Act, 1948, s. 17 and s. 18. During their accounting period from March 1, 1948, to April 30, 1949, the gas undertaking made a profit of £30,178 12*s.* 7*d.* which amount was unascertained at the vesting date. Under the Hinckley Local Board Gas Act, 1880, s. 43 (as amended by the Hinckley Gas Order, 1922, and the Hinckley Gas Order, 1928), the local authority had the option, if there was surplus revenue of the gas undertaking not required to be retained as a working balance, to apply the surplus to price reduction or in aid of the general rates of their area. The local authority claimed that, on the true construction of s. 56 (2) of the Gas Act, 1948, that surplus did not vest in the board. Alternatively, they contended that s. 38 (2) of the Interpretation Act, 1889, kept alive the right to appropriate the surplus to the credit of the general rate fund.

Held, (i) the unappropriated profit up to the vesting date vested in the board, a power in a local authority to say that any particular residual surplus might go in relief of rates or reduction of gas charges not being a special provision for the protection of any person or class of persons within the proviso to s. 56 (2).

(ii) the surplus profit up to the vesting date was not a "right" acquired by the local authority, nor was there an "obligation" on the part of the local authority to apply that surplus as the local statute empowered them to do which had accrued to them, within the meaning of the Interpretation Act, 1889, s. 38 (2) (*c*), so as to keep alive their rights under the local legislation as against the board.

Appeal dismissed.

Counsel: *Capewell, K.C.*, and *Keen* for the local authority; *Heald, K.C.*, and *J. P. Ashworth* for the Board.

Solicitors: *Lees & Co.*, for *J. G. S. Tompkins*, Hinckley, for the local authority; *Sherwood & Co.*, for *A. C. Croasdell*, Edgbaston, for the Area Gas Board.

(Reported by F. Guttman, Esq., Barrister-at-Law.)

MISCELLANEOUS INFORMATION

THE LAW SOCIETY—QUESTIONS FOR THE FINAL EXAMINATION

[*By courtesy of the Law Society, we are able to reproduce the following questions set in the March*, 1951, *Final Examination, held on Wednesday, March* 14, 1951.—*Ed., J.P. and L.G.R.*]

The law and practice of magistrates' courts, including indictable and summary offences, matrimonial jurisdiction, bastardy, juvenile courts, treatment of offenders, civil jurisdiction, collecting officers' duties, the issue of process, evidence in criminal cases, and licensing.

61. H applies to a court of summary jurisdiction for a separation order on the ground that his wife has committed adultery. If such an order is made can the court order him to pay maintenance (*a*) for his wife, (*b*) for his children?

62. An urban district council, as the housing authority, has let a house belonging to it at a rental of £65 per annum. The tenancy has been determined by notice to quit owing to the rent being in arrear. The rateable value of the house is £30. Can the council obtain from the justices a warrant of ejectment under the Small Tenements Recovery Act, 1838?

63. Z is fined £5 for causing malicious damage and ordered to pay £3 compensation and £5 5*s.* costs to the prosecutor. He pays nothing and is committed to prison in default. After serving a short part of his sentence he pays £10 and is liberated by the prison governor. The £10 is transmitted to the clerk to the justices by the prison governor. How should the £10 be disposed of by the clerk?

64. (*i*) Within what time may proceedings be commenced in the following cases:

(*a*) Exceeding the 30 m.p.h. speed limit?
(*b*) Proceedings under the Summary Jurisdiction Acts in respect of an offence under the Defence (General) Regulations, 1939, committed in the United Kingdom?
(*c*) Burglary?

(*ii*) For the purposes of the above, what constitutes the commencement of proceedings?

65. You are prosecuting Mr. Fagin for receiving a diamond ring knowing it to have been stolen and to prove guilty knowledge you wish to prove that four years ago he was convicted of another charge of receiving stolen jewellery knowing it to have been stolen. Can this be lawfully done, and if so, in what circumstances?

66. Y, aged nineteen, is fined £5 and allowed one month in which to pay the fine. The magistrates wish to know whether they can place Y under supervision pending payment. Advise them.

67. An information is laid against M alleging that he drove a motor vehicle at a speed exceeding 30 m.p.h. in a built up area contrary to s. 1 of the Road Traffic Act, 1934, and a summons is duly served upon him. On the return day M does not appear in court but is represented by a solicitor. The case is heard in M's absence and he is convicted. The police then state that there are a number of previous convictions recorded against M for similar offences. The previous convictions are not admitted by the solicitor and the magistrates wish to issue a warrant for M's arrest in order that he may be produced in court and identified for the purpose of proving the previous convictions. How would you advise the magistrates?

68. You are acting as clerk of the Juvenile Court which has found proved a case of stealing by a child. The child is accompanied by his mother, but the father is not present in court. The magistrates consult you and say they propose to order that the father of the child should pay a fine of £2. Advise them.

69. The licensee of "The Toby Jug" public house informs you that he wishes to carry out certain alterations to his premises and asks you whether the consent of the licensing justices is required. How would you advise him?

70. Under what circumstances may a defendant at the hearing of the case be committed to prison forthwith for failure to pay a fine, although he has applied for time to pay?

71. On the hearing of an application for an order of bastardy it is apparent that the complainant, who is not legally represented, is incapable of examining her witnesses. What course should the justices adopt?

72. V is charged with being a suspected person loitering about in a street with intent to commit a felony, contrary to s. 4 of the Vagrancy Act, 1824, as amended. Evidence is given that V was kept under observation by two police officers for about twenty minutes in different parts of High Street in circumstances which satisfied them that he was loitering with intent to commit felony and they arrested him. The two police officers had never seen V before and knew nothing about him. Before the justices, the prosecution seek to establish that V was a suspected person by proving previous convictions recorded against him. The defending solicitor objects. How would you advise the justices?

LOCAL GOVERNMENT LEGAL SOCIETY—EAST MIDLANDS BRANCH

The East Midlands Branch of the Local Government Legal Society held a quarterly meeting at County Rooms, Leicester on March 17 last.

The meeting was addressed by Mr. G. O. Brewis, deputy clerk to the Nottinghamshire County Council, on the practical aspects of promoting local legislation. Mr. Brewis dealt with the subject in a very comprehensive manner, distinguishing between the functions of the promoters' solicitor and the Parliamentary agent, and provided much valuable information which would enable a local government solicitor promoting a private Bill for the first time to feel that he had already been introduced to the subject.

A vote of thanks to Mr. Brewis was proposed by Mr. J. H. M. Greaves, town clerk of Newark.

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 20.

LICENSING—APPLICATION FOR ORDINARY REMOVAL OF LICENCE

An application for the ordinary removal of a justices' " on " licence attached to premises known as the " Grapes " was considered by the Newington licensing justices on March 5, 1951. The premises to which it was desired to remove the licence already enjoyed a justices' beer and wine " on " licence and were situate within the same licensing district. The recent history of the " Grapes " has been that after the licence had been renewed in February, 1950, at the general annual licensing meeting, application was made to the licensing justices at the adjourned meeting that year to assess the monopoly value attributable to the premises. The reason for the application was that the owners, a London brewery company, were making an application in the Blackheath division of the County of London for a new " on " licence and desired, if the application was granted, to surrender the licence of the " Grapes " so that the monopoly value attributable thereto might be taken into account in assessing the net monopoly value payable upon the grant of the new licence in the Blackheath division.

The monopoly value was assessed at £2,000, but the brewers' plans went astray when the Blackheath licensing justices declined to grant the new licence. On March 25, 1950, the brewers' lease of the "Grapes" terminated and, contrary to their previous expectations, they found themselves unable to obtain a renewal from the freeholders who went into possession and converted the public house into business premises.

Counsel (Mr. Sidney H. Lamb) supporting the application for removal, which was unopposed, stressed that if the application was granted the owners would surrender the beer and wine on licence attached to the premises to which it was hoped to remove the full " on " licence of the " Grapes " and pointed out that no compensation would have to be paid for the beer and wine licence.

The application was refused and the owners intimated that no application was being made for the renewal of the licence of the " Grapes."

COMMENT

The writer apologizes for dealing once again with a licensing problem, but brewster sessions each year usually manage to produce one or two difficult cases, and the writer hopes that his readers will not feel surfeited with the licensing matter which has been presented in this column during the past few weeks.

A number of legal points arise out of this report which it may be helpful to deal with shortly.

Applications for ordinary removal of justices' licences are made under s. 24 Licensing (Consolidation) Act, 1910, and subs. 3 of the section gives power to the licensing justices to sanction a removal to any premises within a licensing district within the same county. A special removal of a justices' licence on the other hand may only be granted to premises within the same licensing district, and it will be recalled that by subs. 2 of the section, the only grounds upon which special removal may be granted are either that the premises are required for the improvement of highways or for any other public purpose or that they have been rendered unfit for use by fire, tempest, or other unforeseen or unavoidable calamity.

Section 6 of the Licensing Planning (Temporary Provisions) Act, 1945, prohibited ordinary or special removals in a licensing planning area and, as is well known, the whole of London is such an area. Section 33 of the Licensing Act, 1949, however, removed this prohibition in cases where the application was to remove to premises which are already licensed premises, provided licensing planning consent is first obtained.

It will be recalled that s. 26 of the Act of 1910 which prescribes the manner in which applications for ordinary removals are to be made, enacts that such application may only be heard at brewster sessions (a special removal can be sought also at a transfer sessions) and the order authorizing the removal requires confirmation.

The Act of 1945 provides by s. 7 that, in general, applications for new licences require licensing planning consent and that where this is granted, confirmation need not be sought but s. 33 of the Licensing Act, 1949, although rendering licensing planning consent a pre-requisite to the hearing of the application for ordinary removal by the licensing justices, is silent as to the necessity of obtaining confirmation and the better opinion appears to be that such applications require, in a licensing planning area, both licensing planning consent and confirmation.

The application for assessment of monopoly value came before the licensing justices last year by virtue of the Finance Act, 1947, s. 73 (4) (*a*), and it will be appreciated that at the time the figure of £2,000 was fixed, trade was being carried on at the " Grapes " in the normal way, and the licence had been renewed for twelve months to run from April 5, 1950.

A most unusual position arose on the brewers being dispossessed at Lady day, 1950, and the premises being converted into business premises for, in the course of conversion, structural alterations were made which clearly fell within the ambit of s. 71 of the Act of 1910 and the view was taken, the writer believes rightly, that the licence which ran for twelve months from April, 1950, remained in full force, notwithstanding the fact that the licensee had no right to enter upon the premises and in these circumstances it would, in theory, have been possible for proceedings to be instituted under s. 71 (3) of the Act of 1910.

It is interesting to speculate what the position would have been had the brewers made application again this year to the Blackheath licensing justices for the grant which they were unsuccessful in obtaining last year. There is nothing in s. 73 of the Finance Act, 1947, which renders it obligatory upon the holder of a justices' licence who proposes to surrender it in the event of obtaining some other grant, to ask for the monopoly value of the licence to be surrendered to be assessed immediately before the application for a new licence is made, and it is submitted that in the special circumstances set out above it is extremely improbable that, had the licensing justices been asked to assess the monopoly value of the " Grapes " in February, 1951, they would have fixed the figure at anything more than a purely nominal one.

It would seem that there is in this respect a slight flaw in s. 73, but no doubt any licensing bench, on being told that it was proposed to pay for part of the monopoly value payable on a new grant, by surrendering a licence in another division would inquire as to when the licensing justices in that division had assessed the monopoly value of the licence offered by way of surrender. R.L.H.

PENALTIES

West Bromwich—January, 1951—stealing a brooch and two bottles of perfume, value 6*s.* 3*d.*—fined £3. Defendant, a woman of fifty-three, said that for the last nine months everything she touched she had to put into her shopping bag. On a recent occasion she had put all her ornaments in her shopping bag before going out shopping and had to go back again to empty her bag.

West Bromwich—January, 1951—(1) stealing a motor cycle value £225, (2) no insurance, (3) no driving licence—(1) fined £2, (2) fined £1, and to pay 10*s.* costs, (3) fined 10*s.* Disqualified for twelve months, the disqualification to be limited to motor cycles other then army service vehicles. Defendant, a nineteen year old soldier with a good Army record.

Oxford—January, 1951—(1) obtaining £3, from a Post Office with a forged Savings Bank Book, (2) attempting to obtain £3, from another Post Office—fined £10. To make restitution of £9. Defendant, a married man with two children, living apart from his wife, asked for two further charges to be taken into consideration. He had obtained £3 in each case.

Oxford—January, 1951—selling two pairs of nylon stockings at prices exceeding the maximum permitted charge (two charges)—fined £15 on each summons. To pay £2 costs. Defendant, who had been convicted of a similar offence last August, was ordered to refund 2*s.* 5*d.*, on each pair of stockings being the excess charge.

Oxford—January, 1951—offering to sell utility clothing at a price exceeding the maximum permitted charge (11 charges)—fined £2 on each of ten summonses, £5 on another and to pay £3 3*s.* costs. Excess charges on the articles, women's outer wear, varied from 3*s.* 6*d.* to £1 12*s.* 3*d.*

Rhyl—February, 1951—(1) ignoring a " halt " sign, (2) exceeding the speed limit—(1) fined £5, (2) fined £10. Licence endorsed. Police followed defendant's 39 h.p. car at 74 m.p.h. but defendant drew away. Defendant travelled at an average of 58 m.p.h. through a built-up area.

Bristol—February, 1951—stealing a bicycle—six months' imprisonment. Defendant, a man of forty-nine with eleven previous convictions, said he had been out of work for two years.

Loddon—February, 1951—throwing down waste paper on the highway—fined 10*s.* Defendant, eating fish and chips with other youths, threw newspaper and greaseproof paper into the road. Local residents had complained.

Leicester—February, 1951—refusing to pay a 2*d.* fare on a bus—fined £2. Defendant, a woman, told the conductress the fare was 1½*d.*, and that she did not know her job.

REVIEWS

Redgrave's Factories, etc., Acts. Supplement to Seventeenth Edition. By John Thompson, Harold R. Rogers. London : Butterworth & Co. (Publishers) Ltd., Shaw & Sons, Ltd. Price 10s. net.

Among the smaller textbooks in daily use by those concerned there is none better known than *Redgrave's Factories, Truck and Shops Acts*. The seventeenth edition appeared in 1949 ; the need for publishing a supplement running to nearly 150 pages, when only some eighteen months have elapsed, arises largely from the consolidation effected by the Shops Act, 1950, which came into operation on October 1. This Act is given, with comparative tables showing the antecedents of current sections and the current forms of each repealed provision. In addition, there have been several sets of regulations under the principal Acts dealing with such matters as examination of plant, health and welfare in the pottery trade, cleaning of metals by blasting, and so forth, and about two dozen decisions in the High Court or the Scottish Courts bearing on the Acts. The work is produced in the standard form of a noter-up page by page, with the new Acts and Instruments following. Its ostensible date of completion was August 1, 1950, which just covered the Shops Act, but while the text was going through the press further matter has been inserted so far as possible, so that, for practical purposes, it can be taken as up to date at the end of last year. The learned editors (who were responsible also for the seventeenth edition of the main work) express regret for the necessity of periodical supplements, but this is one of the fields in which the law is constantly changing, in details which can easily be overlooked. Lawyers in industrial areas particularly, and indeed elsewhere if they are likely to be concerned with this sort of law, and also trade union officials and the officials of industrial organizations, will find it necessary to have the supplement. The main work and supplement together are obtainable for 47*s.* 6*d.* net.

Constitutional Law. E. C. S. Wade and G. Godfrey Phillips. Fourth Edition. London : Longmans, Green & Co. Price 35*s.* net.

The senior editor of this work is Downing Professor at Cambridge, and has taken sole responsibility for this edition owing to Mr. Phillips' absorption in other business. The work first appeared in 1931, and speedily took its place as a recognized textbook for senior students. It still retains that character, the topics covered being numerous and the treatment of each such as is necessary to give the reader a general impression. The comparatively small size of the book, as compared with some of those upon the same subject (it runs to just over 500 pages) would have made it impracticable to do more than this. We have naturally looked mainly at so much of the work as has to do with local government and the judicial system. Here we find nothing upon which to comment adversely, bearing in mind the purpose of the book, which precludes very detailed treatment. Recent developments, such as the power under the Local Government Act, 1948, to make payments to councillors, and the repeal in 1949 of the Local Government (Boundary Commission) Act, 1945, are duly noted. The book came out just too soon to include any reference to the setting up of the Ministry of Local Government and Planning, which may well turn out to be the most important internal constitutional development of this generation. Here and there there are statements which could be questioned, *e.g.*, in relation to the Channel Islands, that they are " subject to the legislative supremacy of the United Kingdom Parliament." The manner in which imperial statutes have come to apply in the Islands (to the very limited extent that they do so apply) is an extremely involved and subtle question—certainly it has no proper connexion with the doctrines under which the Imperial Parliament legislates for colonies or even for the Isle of Man. In a book of this scope, dealing with so vast a subject there must, however, be statements which are so compendious as to be open to criticism. The learned author's examination of the rule of law is helpful, to all those who are concerned in the working of the law or in public affairs where the development of the constitution is involved. Taking it all in all we think Professor Wade's book remains as good a general handbook as exists for its own purposes.

The Civil Service Today. By T. A. Critchley. London : Victor Gollancz Ltd. Price 12*s.* 6*d.* net.

This work is advertised by the publishers as " the first modern, factual, up to date study of the Civil Service." So far as we know this claim is justified, although in the early part of last year we remember seeing advertisements of a parallel publication from another firm, which for some reason did not appear at the expected date. There is an introduction by Lord Beveridge, in course of which it is stated that Mr. Critchley has served in several departments of government and risen from the ranks to an administrative position, so that he can offer the public the fruits of a wide experience. It is a wholesome sign of the times that His Majesty's Government have been willing to allow the publication of the book, although of course it is not to be taken in any sense as an official publication. The Service has grown enormously since the end of the first world war, a point of time which was marked by the publication of several small books upon its working, amongst them a notable contribution by Lord Beveridge himself. The cause of the expansion is explained by Mr. Critchley in his opening chapters, from which he goes on to speak of its present organization and methods. The overwhelming influence upon the daily life of the Civil Service of political expediency is properly emphasized, and there is an informative chapter upon the use in modern technique of " public relations." After this there are several chapters examining the work of different departments, grouped under the main headings of those which collect money and those which spend it, and then with the tendency shown in the nationalization statutes (although in fact it was much older) to set up independent or semi-independent corporations. Diagrams and tables at the end indicate typical methods of organization and the arrangement of staff. We have tested the book at several points and found no serious ground for challenging its accuracy, although, here and there, there are things which might have been differently expressed or in which the balance could have been different.

Industry and Prudence : a Plan for Accrington. By J. S. Allen and R. H. Mattocks. Published by the Borough of Accrington. Price 30*s.*

This is a good example of a type of work of which there were several soon after the end of the second world war. The Town Council of Accrington commissioned Professor Allen and his late partner, Mr. Mattocks, to produce the plan in 1946, but before their work was finished the Town and Country Planning Act, 1947, had deprived the council of its planning functions. The council are the more to be congratulated, in having decided to go ahead with publication. The book will be useful not merely to the county council as planning authority but to the local authorities of many similar areas. The main title is taken from the borough motto, and the work itself indicates how singularly the Victorian era failed to combine " industry " and " prudence " in the development of land. Accrington is no worse than many industrial towns, in Lancashire and elsewhere. Indeed, as a small town, it is better than many others. Nevertheless there are large sections of the town which would have no place in any modern redevelopment. The work is pleasingly got up ; it has a fascinating, if short, historical introduction with a good character sketch of the old worthies who created England's industrial greatness. It can be recommended to members and officers of all local authorities, who are concerned with modernizing towns of similar character and history.

Practical Points on Planning Law. Edited by Harold J. Brown. London : Sweet & Maxwell, Ltd. 1951. Price 15*s.* net.

Our contemporary, the *Journal of Planning Law*, contains a column of Practical Points, similar to our own but confined to the *Journal's* special field. The present book collects nearly 300 of the answers which the editorial staff of the *Journal* have given to correspondents, of which it is said in the foreword that more than two thirds have not previously been published. As our readers know, we are ourselves prepared if necessary to deal (by way of answers to Practical Points) with queries which for some reason it is not desired to publish : for example, because doing so might disclose a defect in the law of value to unscrupulous persons, although ordinarily we much prefer to publish the questions and answers for the benefit of all our readers. It is rather surprising therefore to find that our contemporary has allowed so many as two thirds of its queries to remain unpublished until now, but the value of the present work will be all the greater, in that the informed opinions of the editorial staff will reach a wider audience. We have been interested to see that a certain number of the queries have been duplicated and been sent to us. It is satisfactory that we have, on the first reading at any rate, not found any upon which our own answers differed from those of the specialists whose opinions are quoted in the book. Since there is a tendency for questions to recur, and all the Practical Points in the book are genuine questions which have arisen in practice, and have been submitted to the *Journal* by subscribers, it is to be expected that many of those questions will come up again. The book can therefore be recommended as one which the local government official and the solicitor in private practice (and indeed members of other professions who are concerned with planning) can usefully have at hand.

CORRESPONDENCE

[The Editor of the *Justice of the Peace and Local Government Review* invites correspondence on any subject dealt with in its columns, for example, magisterial matters, probation, local government, etc.]

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

TOWN AND COUNTRY PLANNING ACT, 1947
PARKING OF COMMERCIAL VEHICLES ON RESIDENTIAL PREMISES—WHETHER "DEVELOPMENT"

I was very interested to read in your issue of March 10 your comments under "Notes of the Week" concerning whether or not the placing of a commercial vehicle in the garage or carriage-drive of a private residence constituted "development" under the Town and Country Planning Act, 1947.

I have had occasion recently to deal with such a case in this area where my council contended that the practice did constitute development and refused planning permission. An appeal was made to the Minister and the Minister's decision allowing the appeal was contained in a letter to me of February 22, 1951, a copy of which I now enclose.

The comments of the Minister contained in the final paragraph of the letter are, I think, of particular interest to planning authorities in clearing up doubts on this point, and you are at liberty to quote all or any part of the Minister's letter in your journal if you so desire.

Yours faithfully,
G. CHAPPELL,
Town Clerk.

Borough of Bebington,
Municipal Office,
Bebington, Wirral.

[The letter to which our learned correspondent refers is given below in full.—*Ed., J.P. and L.G.R.*]

The Town Clerk,
Municipal Offices,
Bebington, Wirral.

SIR,

TOWN AND COUNTRY PLANNING ACT, 1947
APPEAL BY MR. E. WILLACY

I am directed by the Minister of Local Government and Planning to say that he has considered the report of his Inspector, Mr. A. D. Parnham, F.R.I.B.A., F.R.I.C.S., M.T.P.I., on the hearing of representations in connexion with the above-mentioned appeal against the refusal of Bebington borough council, acting on behalf of the local planning authority, to permit the continued use of the curtilage of "Norwood," Plymyard Avenue, Bromborough, for parking a lorry. Plymyard Avenue is an unadopted private road of good residential property with gardens of half an acre or more. The curtilage of "Norwood" is about three-quarters of an acre.

The Minister notes that the appellant at first kept his lorry in a lean-to shed in the garden of this house where he lives with his parents. It had, however, been parked in the open following the council's decision that the shed could be retained only on condition that it was not used for garaging a commercial vehicle. The planning authority had then served notice on the appellant requiring the discontinuance of "the use of the curtilage of the dwelling-house for commercial purposes, *viz.:* as a parking place for a commercial vehicle" and "the restoration of the land to the use of a private garden." The appellant then applied to continue parking his lorry at his home.

It was contended on behalf of the appellant that the parking of the lorry did not involve development and was in any case quite harmless. The appellant operated the lorry himself under contract with a gravel company at Willoughbridge, some forty miles away. Each working morning the empty lorry was driven there for the day's haulage work and in the evening, after delivery of the last load, it was brought home empty and parked for the night. The haulage business was not operated from this house but since the lorry was used for daily travelling it was convenient to keep it there.

As the council have taken enforcement proceedings, the question whether development is involved is not one which the Minister can decide. He can therefore consider the appeal only on its merits.

The Minister considers that the parking of the lorry cannot make any appreciable difference to the amenities of the district provided that it is not used for the carriage of goods to and from the premises. He has accordingly decided to allow the appeal and grant permission for the parking of the lorry on the land in question. This letter is issued as the Minister's decision.

I am to add that while the Minister has decided the appeal solely on its merits, he thinks it may be helpful to point out that, when deciding appeals regarding the accommodation of a commercial vehicle on land or in a garage attached to a dwelling-house, he has, where there is no other purpose involved than the accommodation of the vehicle, consistently held that such accommodation does not constitute development under the 1947 Act. The Minister therefore suggests that the council should consider this aspect of the matter in relation to the accommodation of this vehicle in the future, and to the use generally of private garages and the curtilages of dwelling-houses for the accommodation of commercial vehicles in similar circumstances.

I am, Sir,
Your obedient Servant,
(*Sgd.*) J. H. WADDELL,
Authorized by the Minister to sign in that behalf.

Ministry of Local Government and Planning,
23, Savile Row,
London, W.1.

NEW COMMISSIONS

CAMBRIDGE COUNTY

Mrs. Jeannie Mee, The Manse, Burwell.

STOCKPORT BOROUGH

Frank Connell, 29, St. Lesmo Road, Stockport.
Charles Harry Payne Cooper, 2, Freshfield Road, Heaton Mersey, Stockport.
Hugh Patrick Fay, 460, Didsbury Road, Heaton Mersey, Stockport.
William Russell Fox, 12, Ainsdale Grove, Reddish.
John Holland, 77, Northcliffe Road, Stockport.
Hartley William Jackson, 13, Bankfield Avenue, Norris Bank, Stockport.
Charles Rylance, 277, Turncroft Lane, Stockport.
Mrs. Mary Seaton, 34, Clyde Road, Edgeley, Stockport.
Ellis Edward Spence, Tancroft, Moss Lane, Bramhall, Cheshire.
Mrs. Betty Fane Thornley, Greylands, Broadway, Bramhall, Cheshire.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Adoption—*Separation Order in force at time of child's birth—Husband named in birth certificate as father—Wife admits he is not—Should he be made a respondent?*

I read with interest your reply to P.P. No. 1 at 114 J.P.N. 408, re Adoption of Children.

A somewhat similar case has arisen and I would be most grateful for your further advice.

In this case the mother of the infant obtained a separation order against her husband in 1938. The infant concerned was born in 1948, and soon afterwards the maintenance order was revoked on the ground of the wife's adultery.

The complication arises from the fact that the husband is named on the birth certificate as being the father, though the wife admits that he is not the father. Would you kindly advise me whether in this case the husband should be made a respondent?

If your answer is yes and he refuses to consent because he denies paternity (and the form states he consents "being the father") would the court then be justified in dispensing with his consent without actual evidence that he is not the father? JOL.

Answer.

As the husband is shown in the birth certificate as the father we think he should be made a respondent. It should not be difficult in this case for the court to decide the issue, because when it is proved that a separation order was in force, as in this case, there is no presumption of legitimacy and no need to prove non-access. The court will probably find, therefore, that there is ample evidence to justify their deciding that the husband is not the father.

2.—Bastardy—*"Single woman" — Married woman obtaining separation order after birth of child.*

A woman wishes to apply for an order in respect of a bastard child under the following circumstances:

She was married in 1942. In 1947, during a period of separation by mutual verbal agreement, she gave birth to a child in respect of which the putative father and the mother were the informants for the purpose of registering the birth. Later there was a reconciliation between the husband and wife, and married life was resumed for a period, but in 1949 a separation order was granted by the justices on the application of the wife. During the first year of the child's life, the putative father paid money to the mother for its maintenance. She wishes now to apply for an affiliation order against the putative father who has discontinued making payments.

Am I correct in my view that she may be regarded as a single woman for the purpose of this complaint under the circumstances above mentioned and the fact that she is at present living separate and apart from the husband, there having been no resumption of cohabitation since the order was made on September 30, 1949? SKIT.

Answer.

Yes. *See Boyce* v. *Cox* [1922] 1 K.B. 149; 85 J.P. 279. As the child was born before the separation order was made, the mother will have to prove non-access by her husband. She may now give such evidence herself, Law Reform (Miscellaneous Provisions) Act, 1949, s. 7 (1), which will be replaced by s. 32 (1) of the Matrimonial Causes Act, 1950, when that Act comes into force.

3.—Criminal Law—*Breaking and entering—Broken window—Whether removal of more glass constitutes breaking.*

A window of a mill is already broken but not to such an extent as to permit a person to climb through. A person enters the mill with intent to steal by means of removing three or four of the remaining pieces of glass and then climbing through. By removing these pieces of glass to make the aperture sufficiently large to enable him to climb through does the intruder "break"? I am of the opinion that it is not possible to "break" through a window that is already broken because I contend that a broken window is just as much an invitation for a person to enter as a partly open window or a door slightly ajar, in which cases it is no "break" to open them further.

Assuming you agree, one difficulty appears to be in the matter of degree. One window may be smashed almost completely out but another window may have an aperture exceedingly small, *e.g.*, a bullet hole. JOSS.

Answer.

In our opinion, this does not constitute a breaking. Two cases in point are *R.* v. *Smith* (1827) 1 *Moody* 179, and *R.* v. *Robinson and Baccan* (1831) 1 *Moody* 327. In the former the court held there was no breaking; in the latter it was held there was a breaking because, after removing more glass from the broken window, a fastening inside was moved so as to enable entry to be made—the breaking consisting of the removal of the fastening, not the breaking of the glass. It is possible to imagine extreme cases, but they are not likely to arise often, and the decisions do lay down a principle which must be followed as a guide.

4.—Criminal Law—*Disorderly house—Indictment for—Must procedure under Disorderly Houses Act, 1751, s. 5, be followed?*

Consequent upon observations taken on licensed premises in this city I am satisfied that the police are in possession of evidence sufficient to establish against the licensee of the premises a charge of keeping a disorderly house, but also I am satisfied that the evidence would not be sufficient to establish a charge of keeping a brothel or any other statutory offence. The question therefore arises as to what is the correct procedure for bringing the licensee before the court?

The Disorderly Houses Act, 1751, s. 5, as amended by the Disorderly Houses Act, 1818, provides a special procedure by which any two ratepayers for the area concerned, upon giving notice to a constable and also to the clerk to the rating authority, may initiate proceedings before a justice of the peace. It appears that the correct charge to be preferred against the offender would be one of keeping a disorderly house against the peace, etc., *i.e.*, a common law misdemeanour, as the Disorderly Houses Acts do not seem to create a substantive offence but merely indicate a procedure to be followed.

If two ratepayers are prepared to initiate proceedings in the way prescribed no difficulty would be experienced in bringing the matter before the court. However, there may be some difficulty in obtaining the two ratepayers. The first question, therefore, is, if two of the constables concerned in taking observations are ratepayers of the city, may they serve the notice concerned and would they then be entitled to the reward provided for in s. 5 of the 1751 Act, or must the two inhabitants be persons other than constables?

Alternatively is the procedure outlined in the 1751 Act the only procedure which can be adopted in this case or could the offender be brought before the court and charged with a common law misdemeanour merely upon the information of a police officer and the normal procedure of the committal for trial followed. The Disorderly Houses Act, 1751, does not appear to exclude the normal procedure but merely, in my opinion, provides an alternative procedure.

To summarize the above, the following questions are asked:

1. Must the procedure set out in the Disorderly Houses Acts, 1751 and 1818 be followed before a person can be charged with keeping a disorderly house, or will it be sufficient to charge a person upon the information of a police officer?

2. If the Disorderly Houses Acts procedure must be followed can the notices referred to therein be served by two constables who are also ratepayers for the area concerned? J. K.P.T.F.

Answer.

1. We think that the ordinary procedure for an indictable offence may be followed by laying an information as provided by s. 1 Indictable Offences Act, 1848.

2. If the procedure under the 1751 Act is followed we think that two ratepayers are not disqualified from acting thereunder merely because they happen to be also constables.

5.—Housing Act, 1936—*Demolition order—Suggested use of house for storage.*

The council made a demolition order in respect of a cottage situate in the grounds of a large house. The tenant of the cottage has been rehoused and the owners now ask the council to confirm that it will be in order for the cottage, after removal of all internal fittings, to remain for use as a storehouse or outhouse to the large house. Can the council give this confirmation? AJAY.

Answer.

No; if, as we gather, the demolition order has become operative, the owner must demolish and, if he does not, the council must do so and sell the materials—*see* s. 13 of the Housing Act, 1936. The time for the owners to make their proposal for using the cottage as a store or outhouse was before the stage of a demolition order: *see* s. 11 (2) and (3).

6.—Magistrates—*Ballast—Weights and Measures Act*, 1936—*Carriage by road—No conveyance note—Haulage contractor engaged by seller—Offences by seller and haulage contractor.*

A, a quarry proprietor, contracts to supply B, a local authority, with stone chippings by weight, the terms of the contract being such that A causes delivery to be made at any selected site within a ten mile radius of the agreed sea port X, to which the stone chippings are conveyed by water. To effect delivery from the port to the site the stone must be conveyed along a public road. For this purpose A engages C a local firm of haulage contractors. C do not issue conveyance notes prescribed under the Weights and Measures Act, 1936, neither do they cause their loads which are conveyed along the highway to be weighed. Their contract for haulage with A is based on the shipped tonnage determined at the place of loading. What offences, if any, are committed by A and/or C against the provisions of the Weights and Meaures Act, 1936? JAVIO.

Answer.

The Act by s. 4 (1) (*a*) makes the person in charge of the vehicle responsible for carrying with him a conveyance note, and he (C's servant) is the principal offender under that subsection.

C, we think, has a duty to see that the conveyance note is given to his servant and he can be charged with aiding and abetting his servant.

It appears from the question that C is merely A's agent and that A is the "appropriate person" within s. 4 (1) who should sign the conveyance note or arrange that someone signs it on his behalf. By failing so to do we think that A also aids, abets, counsels and procures the commission of the offence by C's servant.

7.—Public Health Act, 1936—*Water supply—Notice to quit—Occupation not terminated.*

An occupier of a farm cottage whose notice to quit has expired has had the only available water supply to the cottage cut off by the owner, the purpose being to expedite vacation of the property. Will you please advise:

1. Whether the council may take action under s. 138 of the Public Health Act, 1938, or

2. Whether a notice under s. 92 (1) (*a*) would be the appropriate action to take under the circumstances. AMP.

Answer.

In absence of information about the position between owner and occupier (*e.g.*, was the occupier a tenant or servant? Is he now claiming to remain under statute?) it does not appear whether the occupier has any right to be on the premises or is a bare trespasser. But so long as the house is occupied in fact, the council can use s. 138 as amended by s. 30 of the Water Act, 1945. We regard this specific power as better, in such a case, than s. 92. Whether it is reasonable to take action (note this word in the amending section) will be for determination if the owner appeals to a court of summary jurisdiction under the new subs. (2A).

8.—Licensing—*Sale of intoxicating liquor through medium of "Christmas Club" conducted by unlicensed retailer.*

With reference to P.P. 9 at p. 143 *ante*, our client has now raised this point. A number of the shops he has in mind and which he supplies with mineral waters, are of course not licensed. Some of the customers of those shops have asked the shopkeeper if he could get them a bottle of wine or spirits for Christmas, payment to be made by weekly instalments at the shops, *i.e.*, a Christmas club. Our client asks if this would be legal if the actual delivery of the wines and spirits referred to was made by our client at the individual houses of the customers concerned.

We cannot think such a scheme would be legal but shall be glad to have your views. NOST.

Answer.

Sales conducted in the manner outlined are undoubtedly sales by an unlicensed person at unlicensed premises and contravene s. 65 of the Licensing (Consolidation) Act, 1910. The transaction mentioned is a sale by a licence-holder to his unlicensed customer whose place in the scheme is that of a retailer selling to his customer, the licence-holder being his agent to carry out the delivery. There is apparently no privity of contract between the licence-holder and the ultimate, or "real," purchaser.

9.—Licensing—*Consent to grant of an occasional licence—Whether appropriate where licensee has given up business in licensed premises during the currency of the justices' licence.*

A is the holder of a restaurant licence who frequently obtains occasional licences in respect of an unlicensed dance hall which he also operates. I am given to understand that he has sold the restaurant premises to B who does not intend to continue the licence, and, therefore, no application to renew the licence will be made at the next licensing meeting. In view of the fact that A's licence does not expire until April 5 next I should be glad of your valued opinion as to whether it would be lawful for the justices to grant an occasional licence to A in respect of his dance hall although he is not in fact operating the licence at the premises to which it is attached. I appreciate that the justices may well feel that it would be inadvisable to grant an occasional licence in these circumstances, but my query is directed to the question of whether they have a discretion in the matter. N.C.J.B.

Answer.

The qualifications required of a person seeking the grant of an occasional licence are still to be found in s. 13 of the Revenue Act, 1862, and s. 5 of the Revenue (No. 1) Act, 1864, namely, in the case in point, that he shall be duly authorized to keep a common inn, alehouse or victualling house, and that he shall have taken out the proper excise licences to sell therein beer, spirits or wine. Our correspondent's question indicates that A is duly authorized to carry on licensed business by virtue of his holding a justices' licence which entitles him to take out excise licences, although he may in fact have ceased to carry on such a business; but it leaves open the more important question of whether current excise licences are in force. If such licences are in force, we are of opinion that the justices have discretion to consent to the grant of an occasional licence.

10.—Magistrates—*Practice and procedure—Public Stores Act*, 1875, *s. 7—Evidence called by defence—Right of prosecution to call rebutting evidence.*

There is a case before a court of summary jurisdiction here for unlawful possession of His Majesty's stores, contrary to s. 7 of the Public Stores Act, 1875. It would seem that the prosecution has the burden of proving: (*a*) criminal possession within the meaning of s. 10 of the Act, and (*b*) that the stores were "His Majesty's stores"; and that thereafter the onus lies on the defendant to "give an account to the satisfaction of the court how he came by the same."

The question on which your learned opinion and assistance are required is as to whether, the defendant having given and/or called evidence in discharge of this onus, the prosecution would be entitled to call rebutting evidence. JIB.

Answer.

By s. 14 of the Summary Jurisdiction Act, 1848, after the prosecution's case has been heard, the court is to hear "the defendant and such witnesses as he may examine and such other evidence as he may adduce in his defence, and also to hear such witnesses as the prosecutor may examine in reply *if such defendant shall have examined any witnesses or given any evidence other than as to his, the defendant's, general character.*"

It is clear, therefore, that witnesses may be called in rebuttal if the defendant gives or calls evidence other than as to character.

11.—Mental Deficiency Act, 1913—*Mental defectives—Procedure—Persons guilty of offences, etc.*

Section 8 appears to apply to two distinct types of case: (*a*) "On the conviction by a court of competent jurisdiction of any person of any criminal offence punishable in the case of an adult with imprisonment," and (*b*) "on a child brought before a court under s. 58 of the Children Act, 1908, being found liable to be sent to an approved school."

Section 58 of the Children Act, 1908, which only dealt with children appears to have been replaced by ss. 61 (1) (*a*), (2), 62, 64, and 65 of the Children and Young Persons Act, 1933, but those sections apply to young persons in addition to children. Attention is drawn to s. 38 of the Interpretation Act, 1889, and s. 108 of the Children and Young Persons Act, 1933.

1. Can all the following classes of persons, namely, adults, young persons and children be dealt with under (*a*) above?

2. Can young persons in addition to children be dealt with under (*b*) above? A. JAMES.

Answer.

1 and 2 Yes. As regards (*b*) above, and query 2, *see* s. 108 (3) of the Act of 1933.

12.—Road Traffic Acts—*Provisional driving licence—Qualified driver in back seat—Does this allow adequate supervision?*

A, being a provisional licence holder, is charged under reg. 16 (3) (*a*) of the Motor Vehicles (Driving Licences) Regulations, 1950, with driving a motor car when not under the supervision of a competent driver, and the passenger, B, not the holder of a driving licence, who who is seated in the front seat besides A is charged with aiding and abetting A. C who is the holder of a driving licence to drive all vehicles and a competent driver, was at the time of the occurrence seated in the back seat of the car. C now alleges that he was A's competent driver.

Having regard to C's position in the car is A "under the supervision of a person who is present in the vehicle with him and holds a licence not being a provisional licence." J. MOBILE.

Answer.

When the qualified driver is present in the vehicle with the learner it must be a question of fact for the justices whether the learner was under the supervision of the qualified driver.

The natural place for the supervisor would appear to be beside the learner, but we think that as the qualified driver is in fact in the car the onus is on the prosecution to satisfy the court beyond reasonable doubt that he was not exercising proper supervision. If that is done the defence may seek then to rebut the prosecution's case.

We do not think it is possible to answer the question definitely just on the basis of the position occupied in the car by C.

13.—Road Traffic Act—*Special reasons—No insurance policy—Circumstances serious but insurance company say they would pay any claim—Effect of Pilbury* v. *Brazier* [1950] 2 *All E.R.* 835.

In view of the decision of *Pilbury* v. *Brazier* [1950] 2 All E.R. 835; 114 J.P.N. 604, is it understood that, notwithstanding the circumstances which lead to the offence, if evidence is given by the insurers that they considered themselves liable and would meet any claim, would justices be entitled to find that special reasons existed?

J. LEX.

Answer.

We do not think any such wide interpretation can be put upon the case referred to. At the beginning of his judgment Lord Goddard says: "There is no question whatever . . . that, ordinarily speaking, driving an uninsured car is a serious offence." It is from this point of view that such cases must be regarded, and the facts in *Pilbury* v. *Brazier*, *supra*, must be taken fully into account in considering whether, in any subsequent case, it is an authority for not ordering disqualification in that case.

14.—Road Traffic Act—*Special reasons—Section* 15 *Road Traffic Act*, 1930—*Car driven only twenty yards—Driver found by police asleep in car two and a half hours later—Relevant cases.*

We have been instructed in the defence of a person charged with being in charge of a motor vehicle on a road whilst under the influence of drink.

Our client left a firm's outing dinner at 11 *p.m.* and drove his car a matter of twenty yards before he felt ill and accordingly pulled up his vehicle close to the near side kerb to recover. At 1.30 *a.m.* the next morning he was found by a police officer asleep in the car and the charge followed.

It seems clear that our client was "in charge" of his car within the meaning of the section and our attention is directed towards the special reasons for avoiding disqualification, based on the very short distance travelled before pulling up.

We recollect that there has been several recent cases on or near the point and we should be grateful if you can refer us to them. JIG.

Answer.

We think that the two recent cases in point are *Duck* v. *Peacock* [1949] 1 All E.R. 318 and *Jowett-Shooter* v. *Franklin* [1949] 2 All E.R. 730. The former, in which it was held that there were no special reasons, seems to be more on all fours than the latter with the case referred to by our correspondent.

15.—Road Traffic Acts—*Time for proceedings—Notice served and summons issued within proper times—Delay in service of summons—Can proceedings be continued?*

I have been asked to obtain your valued opinion on the following point.

As the result of an accident, A, the driver of one of the motor vehicles is served with a warning of intended prosecution within the fourteen days of the occurrence, and the police laid an information and took out a summons within three weeks of the occurrence. Seven months have now elapsed since the occurrence, but the police have not served the summons on A. This delay has been due to the condition of B, a main witness for the prosecution, who as a result of the accident was in hospital for months and until recently could not have attended the court.

I have referred to *Mahaffy & Dodson Road Traffic Acts and Orders* (2nd edn.) but not found anything directly bearing on the point, though there is a note on p. 333 that except in cases coming within s. 33 of the Act of 1934, proceedings must be brought within six months of the occurrence. Again there is a footnote on p. 47 to the effect that a warning of intended prosecution does not take the place of a summons.

My own view is that proceedings are now statute barred, and the proper course would have been for the police to have served the summons on A, and, if necessary, asked for adjournments until B could attend. I understand however that this view is not shared by other justices' clerks, some of whom would like to see the point cleared up by an appeal. I should like your view before I permit the case to be heard. J. SILEX.

Answer.

There is ample authority for saying that if the information is laid within the time prescribed by statute (as this case six months) the summons need not be issued within that period, and there are on record cases in which the issue has been delayed for many months. We do not think, therefore, that the proceedings in this case are barred by lapse of time.

What we do not understand is the statement that the summons has been issued, but not served by the police. We should have expected the justices, when issuing the summons, to require the defendant to appear before the court at a certain time and place (*see* Summary Jurisdiction Act, 1848, s. 1). When a summons has been issued it is not for the police, without the authority of the court, to delay the service unless the defendant cannot be found. We confess we are not clear as to exactly what has happened in this case.

16.—Small Dwellings Acquisition Acts—*Purchase by tenant of his residence and adjoining house.*

The local authority have been asked to advance £500 under the Small Dwellings Acquisitions Acts (as amended) by a tenant who is purchasing a house, which he occupies as tenant, and the adjoining house for £700. The vendor will not sell the one house without the other and the purchaser is eager to buy both, as he hopes to get possession of the second house and combine them in one house for his own occupation, as both houses are small. The £500 is well under ninety *per cent.* of the £700 (which is also the surveyor's valuation of the two houses) but is more than ninety *per cent.* of the valuation of the one house at present occupied by the would-be purchaser.

1. Can the local authority make this advance?
2. If instead of there being two separate houses it was one house divided into two maisonettes, one occupied by the proposed mortgagor and the other let, would this affect your reply?
3. If instead of maisonettes there were two flats, would this make any difference? ANF.

Answer.

1. We think not.

2 and 3. To take first an incidental point, we do not think there is any difference here between maisonettes and flats. (A maisonette we understand to be, so to speak, a double decker flat.) What you may have in mind is a possible difference according as the house is divided into self-contained parts, or merely let out in parts not self-contained. If the parts are not self-contained, a mortgagor living in one of them is plainly within the Act. It can perhaps be argued that the house of a man who lives in a self-contained part of a divided house is the part in which he lives, not the whole. In some Acts this is declared to be so, but not in the Act of 1899. (The practice of dividing the smaller sort of house into self-contained parts had hardly begun, and was probably not contemplated by Parliament when the Act was passed.) On the whole, therefore, we think "house" should have its popular meaning, as a residential unit enclosed by walls, and extending from foundation to roof, whether or not a vertical division has been inserted.

17.—Tort—*Electrified fences—Liability for injury.*

A proposal is being put forward to erect an electrified fence along the boundaries of a building site, which is part of a larger area of pasture land, for the purpose of confining cattle to that part of the area not at present used for building. It is known that the occupiers of neighbouring houses have been in the habit of trespassing on the pasture land for exercising dogs and dumping rubbish. The contractor carrying out the building and his servants may also come into contact with the fence. Parts of the fence will adjoin a highway.

Will you please advise therefore whether you consider there will be liability for injury suffered by persons coming into contact with the fence who are:

1. Trespassers.
2. The contractor and his servants or
3. Persons using the highway? ALL.

Answer.

1. Yes: *Barnes* v. *Ward* (1850) 19 L.J.C.P. 195 and many other cases to be found in the text-books. Injury to a trespassing dog may give a cause of action: *Hardy* v. *Central London Railway* (1920) 89 L.J.K.B. 1187.
2. Yes: this is *a fortiori*.
3. Yes: *a fortiori* again.

When we first read that these fences were being used on farms as well as for prison camps we gathered that the voltage in pastures was so low that no human being could be injured, though it would give a harmless shock to animals and thus deter them from breaking through the fence. Even so, we should suppose that a child or small dog might be injured. The proposal is one we should strongly advise a client not to adopt.

OFFICIAL AND CLASSIFIED ADVERTISEMENTS, ETC. *(contd.)*

LEGAL ASSISTANTS—Vacancies on permanent staff of Metropolitan Police Office for admitted solicitors. Age limits 26-40.

Duties chiefly advocacy but other classes of legal work, including lecturing, may be required.

Salary £600 at age 26, plus £25 for each year above 26 up to £700. On confirmation, after probationary period of not less than one year, £800, less £25 for each year below 30; thereafter annual increments of £30 to £1,070.

Particulars (including details of higher posts) and application form from Secretary (Room 163), New Scotland Yard, S.W.1, within 10 days.

COUNTY COUNCIL OF MIDDLESEX

APPLICATIONS are invited for the post of Assistant Solicitor (A.P.T. Grade IX £750×£50–£900 per annum plus London Weighting). The appointment will be to the established staff and subject to the prescribed conditions of service. Superannuation benefits are according to the Minister of Health's Regulations and the person appointed must satisfy the County Medical Officer as to medical fitness. Candidates must have two years' experience, since admission, with a local authority. Some advocacy would be an advantage. Applications, giving the names of two referees, should reach me by April 16, 1951 (quoting J.262 J.P.). Canvassing disqualifies.

C. W. RADCLIFFE,
Clerk of the County Council.

Guildhall, Westminster, S.W.1.

COUNTY COUNCIL OF MIDDLESEX

APPLICATIONS are invited from Solicitors for a post of Senior Legal Assistant (A.P.T. Grade X £850×£50–£1,000 per annum plus London Weighting). The appointment will be to the established staff and subject to the prescribed conditions of service. Superannuation benefits are according to the Minister of Health's Regulations and the person appointed must satisfy the County Medical Officer as to medical fitness. Candidates must be experienced in general local government law and administration and such experience must include four years in local government of which at least two years should have been with a County Council or County Borough Council. Applications, giving the names of two referees, should reach me by April 16, 1951 (quoting J.263 J.P.). Canvassing disqualifies.

C. W. RADCLIFFE,
Clerk of the County Council.

Guildhall, Westminster, S.W.1.

NORTH RIDING OF YORKSHIRE COUNTY COUNCIL

APPLICATIONS are invited for the appointment of junior Assistant Solicitor in the office of the Clerk of the Peace and of the County Council. Local government experience, preferably in the office of a clerk of a county council, desirable. Salary £635×£25 to £710 per annum. Appointment superannuable, and subject to medical examination, and to the National Scheme of Conditions of Service.

Applications, stating age, qualifications and experience, and particulars of present appointment, with the names of three referees, to be sent to the Clerk of the County Council, County Hall, Northallerton, by Saturday, April 21, 1951.

Canvassing will disqualify, and a candidate who is related to a member of or senior officer under the Council must disclose the fact when applying.

County Hall,
Northallerton.
April 2, 1951.

DERBYSHIRE COUNTY COUNCIL

Deputy Clerk of the Council

APPLICATIONS are invited from Solicitors with experience of County Council work for the appointment of Deputy Clerk of the County Council. The salary will be £1,300×£100 to £1,500, plus car allowance.

The person appointed will be required to pass a medical examination and the post is pensionable under the Local Government Superannuation Acts. Generally the National Joint Council's Conditions of Service will apply.

The detailed conditions of appointment and forms of application may be obtained from me. Completed applications, accompanied by the names of three referees, must reach me not later than April 28 next.

Canvassing will disqualify the candidate.

D. G. GILMAN,
Clerk of the County Council.

County Offices,
Derby.

COUNTY OF CAMBRIDGE
CITY OF CAMBRIDGE

Appointment of Full-time Female Probation Officer

APPLICATIONS are invited for the position of Full-time Female Probation Officer to serve jointly the Combined Area Probation Committee of the County of Cambridge and the Justices of the City of Cambridge.

The appointment will be subject to the Probation Rules, 1949 and 1950, and the salary will be in accordance with such Rules and subject to Superannuation deductions. The successful candidate may be required to undergo a medical examination.

Applications, stating age, qualifications and experience, together with copies of not more than two recent testimonials, should be sent to the Clerk to the Justices for the City of Cambridge not later than April 16, 1951.

CHARLES PHYTHIAN,
Clerk to County Committee.
C. A. G. HARDING,
Clerk to the City Justices.

METROPOLITAN BOROUGH OF HAMPSTEAD

Appointment of Senior Assistant Solicitor

Town Clerk's Department

APPLICATIONS are invited for the appointment of Senior Assistant Solicitor in the Town Clerk's Department at a salary in accordance with Grade A.P.T. IX (£750×£50 to £900 per annum) of the National Salary Scale, plus London Area Weighting.

Application, on the form which may be obtained from me, giving full particulars and accompanied by copies of three recent testimonials, must be delivered to me in a sealed envelope endorsed "Senior Assistant Solicitor" not later than April 23, 1951.

The appointment is subject to the provisions of the Local Government Superannuation Act, 1937, and the successful candidate will be required to pass a medical examination.

Canvassing will disqualify.

P. H. HARROLD,
Town Clerk.

Town Hall,
Haverstock Hill, N.W.3.
April 2, 1951.

WILTSHIRE

Full-time Male Probation Officer

APPLICATIONS are invited for this appointment. Conditions and salary subject to the Probation Rules, 1949 and 1950. Applications in writing stating age, qualifications and experience, with names of two referees, to reach me by April 20, 1951.

P. A. SELBORNE STRINGER,
Clerk of the Peace.

County Hall,
Trowbridge, Wilts.
April 2, 1951.

COUNTY BOROUGH OF BURY

Appointment of Assistant Solicitor

APPLICATIONS are invited from Solicitors for the appointment of Assistant Solicitor. Salary A.P.T. VA (£550-£610) rising to A.P.T. VII (£635-£710) after two years admission. Previous local government experience will be an advantage but is not essential.

The appointment is subject to the Local Government Superannuation Act, 1937, and to medical examination, and terminable by two months' notice.

Applications, stating age, experience, past and present appointments, together with copies of two recent testimonials, and endorsed "Assistant Solicitor," must reach me not later than April 19, 1951.

EDWARD S. SMITH,
Town Clerk.

Town Hall,
Bury.
April 3, 1951.

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